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THE GENERAL STATUTES OF NORTH CAROLINA

1981 CUMULATIVE SUPPLEMENT

Annotated, under the Supervision of the Department of
Justice, by the Editorial Staff of the Publishers

Under the Direction of
D. P. HARRIMAN, S. C. WILLARD, SYLVIA FAULKNER
AND D. E. SELBY, JR.

Volume 3A, Part II

1978 Replacement

DEC 7 1981

Annotated through 302 N.C. 222 and 50 N.C. App. 567. For
complete scope of annotations, see scope of volume page.

**Place with Corresponding Volume of Main Set. This
Supersedes Previous Supplement, Which May
Be Retained for Reference Purposes.**

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Preface

This Supplement to Replacement Volume 3A, Part II, contains the general laws of a permanent nature enacted by the General Assembly at the second 1977 and the first and second 1979 Sessions and the 1981 Session through October 10, 1981, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments of former laws are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings. Editors' notes point out many of the chapters effected by the amendatory acts.

Chapter analyses show all sections except catchlines carried for the purpose of notes only. An index to all statutes codified herein will appear in Replacement Volumes 4B and 4C.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed. All legislation appearing herein became effective upon ratification, unless noted to the contrary in an editor's note or an effective date note.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the general laws enacted by the General Assembly at the second 1977 and the first and second 1979 Sessions and the 1981 Session through October 10, 1981, affecting Chapters 113 through 116A of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

- North Carolina Reports through volume 302, p. 222.
- North Carolina Court of Appeals Reports through volume 50, p. 567.
- Federal Reporter 2nd Series through volume 650, p. 292.
- Federal Supplement through volume 515, p. 55.
- Federal Rules Decision through volume 89, p. 719.
- Bankruptcy Reporter through volume 11, p. 138.
- United States Reports through volume 449, p. 410.
- Supreme Court Reporter through volume 101, p. 2881.
- North Carolina Law Review.
- Wake Forest Law Review.
- Campbell Law Review.
- Duke Law Journal.
- North Carolina Central Law Journal.
- Opinions of the Attorney General.

The General Statutes of North Carolina

1981 Cumulative Supplement

VOLUME 3A, PART II

Chapter 113.

Conservation and Development.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

Powers and Duties of Department of Natural Resources and Community Development Generally.

Sec.

113-24. [Repealed.]

Article 1B.

Aviation.

113-28.5 to 113-28.12. [Recodified.]

SUBCHAPTER II. STATE FORESTS AND PARKS.

Article 2.

Acquisition and Control of State Forests and Parks.

113-36. Applications of proceeds from sale of
products.

113-39. License fees for hunting and fishing on
government-owned property
unaffected.

Article 4B.

Southeastern Interstate Forest Fire Protection Compact.

113-60.16 to 113-60.20. [Reserved.]

Article 4C.

Regulation of Open Fires.

113-60.21. Purpose and findings.

113-60.22. Definition.

113-60.23. High hazard counties; permits
required; standards.

113-60.24. Open burning in non-high hazard
counties; permits required; stan-
dards.

113-60.25. Open burning prohibited statewide.

113-60.26. Permit conditions.

113-60.27. Permit suspension and cancella-
tion.

113-60.28. Control of existing fires.

Sec.

113-60.29. Penalties.

113-60.30. Effect on other laws.

113-60.31. Exempt fires; no permit fees.

Article 6.

Fishing Generally.

113-78. [Repealed.]

SUBCHAPTER II-A. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

Article 6B.

License Agents.

113-81.4 to 113-81.13. [Repealed.]

SUBCHAPTER III. GAME LAWS.

Article 7.

North Carolina Game Law of 1935.

113-82 to 113-99. [Repealed.]

113-99.1. [Recodified.]

113-100 to 113-109. [Repealed.]

Article 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

113-109.6 to 113-109.8. [Repealed.]

Article 8.

Fox-Hunting Regulations.

113-110.1 to 113-112. [Repealed.]

Article 9.

Federal Regulations on Federal Lands.

113-113. [Repealed.]

Article 9A.

Regulation of Trapping.

113-113.6 to 113-113.14. [Repealed.]

GENERAL STATUTES OF NORTH CAROLINA

Article 9B. Regulation of Beaver Taking.

Sec.
113-113.20 to 113-113.23. [Repealed.]

Article 10.

Regulation of Fur Dealers; Licenses.

113-114 to 113-120. [Repealed.]

Article 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

113-120.1 to 113-120.4. [Transferred.]

Article 10B.

Liability of Landowners to Authorized Users.

113-120.5 to 113-120.7. [Repealed.]

Article 11.

Miscellaneous Provisions.

113-121 to 113-126.1. [Repealed.]
113-126.2. Use of artificial lights in areas
inhabited by game in certain
counties.

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Article 12.

General Definitions.

113-127. Application of Article.
113-128. Definitions relating to agencies and
their powers.
113-129. Definitions relating to resources.
113-130. Definitions relating to activities of
public.

Article 13.

Jurisdiction of Conservation Agencies.

113-131. Resources belong to public;
stewardship of conservation
agencies.
113-132. Jurisdiction of fisheries agencies.
113-133. Abolition of local coastal fishing laws.
113-133.1. Limitations upon local regulation of
wildlife resources; certain local
acts retained.
113-134. Regulations.
113-134.1. Jurisdiction over marine fisheries
resources in Atlantic Ocean.
113-135. General penalties for violating Sub-
chapter or regulations; increased
penalty for prior convictions;
interpretive provisions.
113-135.1. Limitation upon penalty for offense
created by regulations of Wildlife
Resources Commission in certain
instances.
113-136. Enforcement authority of inspectors
and protectors; refusal to obey or

Sec.

allow inspection by inspectors and
protectors.

113-137. Search on arrest; seizure and con-
fiscation of property; disposition of
confiscated property.

113-138. Enforcement jurisdiction of special
officers.

113-139. [Repealed.]

113-140. Warning tickets.

113-141 to 113-150. [Reserved.]

Article 14.

Commercial and Sports Fisheries Licenses and Taxes.

113-155.1. Commercial fisherman; identifica-
tion.

113-161. Nonresidents reciprocal agreements.

113-162. Fraud or deception as to licenses,
taxes or records.

113-163. Record-keeping requirements.

Article 15.

Regulation of Coastal Fisheries.

113-187. Penalties for violations of Article and
regulations.

113-189. Protection of sea turtles and
porpoises.

Article 16.

Cultivation of Oysters and Clams.

113-208. Protection of oyster and clam leases.

Article 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

113-221. Filing, codification and publication of
regulations; effective date of regu-
lations; proclamations sus-
pending or implementing regu-
lations; presumption of
publication; judicial notice of codi-
fications; Secretary's certificates
as evidence.

113-229. Permits to dredge or fill in or about
estuarine waters or state-owned
lakes.

113-230. Orders to control activities in coastal
wetlands.

Article 20.

Miscellaneous Regulatory Provisions.

113-261. Taking fish and wildlife for scientific
purposes; permits to take in nor-
mally unauthorized manner;
cultural and scientific operations.

113-262. Taking fish or wildlife by poisons,
drugs, explosives or electricity
prohibited; exceptions; possession

- Sec. of illegally killed fish or wildlife prohibited.
- 113-263. Inspecting plans and specifications of dams.
- 113-264. Regulatory power over property of agency; public hunting grounds.
- 113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc.
- 113-266. [Reserved.]
- 113-267. Replacement costs of marine, estuarine, and wildlife resources; regulations authorized; prima facie evidence.
- 113-268 to 113-270. [Reserved.]

Article 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

- 113-270.1. License agents.
- 113-270.2. Hunting licenses.
- 113-270.2A. Voluntary contribution to hunters safety education program.
- 113-270.3. Special activity licenses; big game kill reports.
- 113-270.4. Hunting guide license.
- 113-270.5. Trapping licenses.
- 113-271. Hook-and-line licenses in inland fishing waters.
- 113-272. Special trout licenses.
- 113-272.1. [Repealed.]
- 113-272.2. Special device licenses.
- 113-272.3. Special provisions respecting fishing licenses; grabbling; taking bait fish; use of landing nets; lifetime licenses issued from Wildlife Resources Commission headquarters; personalized lifetime sportsman combination licenses.
- 113-272.4. Collection licenses.
- 113-272.5. Captivity license.
- 113-273. Dealer licenses.
- 113-274. Permits.
- 113-275. General provisions respecting licenses and permits.
- 113-276. Exemptions and exceptions to license and permit requirements.
- 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.
- 113-276.2. Licensees and permittees subject to administrative control; refusal to issue or reissue, suspension, and revocation of their licenses and permits; court orders of suspension.
- 113-276.3. Mandatory suspension of entitlement to license or permit

- Sec. for fixed period upon conviction of specified offenses.
- 113-277. Suspension and revocation of licenses and permits in the discretion of the court; suspension of entitlement; court's power concurrent; definition of "conviction"; penalties.
- 113-278 to 113-280. [Reserved.]

Article 21A.

Regulating Hunting and Fishing on the Registered Property of Another.

- 113-281. Definitions.
- 113-282. Registration and posting of property.
- 113-283. Entry permits furnished by Wildlife Resources Commission.
- 113-284. Affirmative duty of sportsmen to determine if property is registered and posted.
- 113-285. Hunting or fishing on registered property of another without permission.
- 113-286. Removal, destruction, or mutilation of posted notices.
- 113-287. General provisions pertaining to enforcement of Article.
- 113-288 to 113-290. [Reserved.]

Article 22.

Regulation of Wildlife.

- 113-291. General restrictions.
- 113-291.1. Manner of taking wild animals and wild birds.
- 113-291.2. Seasons and bag limits on wild animals and birds; including animals and birds taken in bag; possession and transportation of wildlife after taking.
- 113-291.3. Possession, sale, and transportation of wildlife.
- 113-291.4. Regulation of foxes; study of fox and fur-bearer populations.
- 113-291.5. Regulation of dogs used in hunting; limitations on authority of Wildlife Resources Commission; control of dogs on game lands; control of dogs chasing deer; other restrictions.
- 113-291.6. Regulation of trapping.
- 113-291.7. Regulation of bears; limited retention of local acts closing bear seasons.
- 113-292. Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species.
- 113-293. Obstructing rivers or creeks; keeping open fishways in dams.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

113-294. Specific violations.

113-295 to 113-300. [Reserved.]

Article 22A.

Use of Poisons and Pesticides.

113-300.1. Use of poisons and pesticides in general.

113-300.2. Declaring wild animal or bird a pest; concurrence of Wildlife Resources Commission required before poison or pesticide may be used.

113-300.3. Penalties for violations of Article; repeated offenses.

Article 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

113-301. [Repealed.]

113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and regulations; filing of new and amended regulations.

113-302. Prima facie evidence provisions.

113-302.1. Inspection of licensed or commercial premises; authority to secure inspection warrants.

113-303. Arrest, service of process and witness fees of protectors.

113-304. Reciprocal agreements by Wildlife Resources Commission.

113-305. Cooperative agreements by Wildlife Resources Commission.

113-306. Administrative authority of Wildlife Resources Commission; disposition of license funds; delegation of powers; injunctive relief.

113-307. Adoption of federal laws and regulations.

113-307.1. Legislative assent to specific federal acts.

Article 23B.

Fishermen's Economic Development Program.

113-315.20 to 113-315.24. [Reserved.]

Article 23C.

North Carolina Seafood Industrial Park Authority.

Sec.

113-315.25. Creation of Authority; membership; appointment; terms and vacancies; officers; meetings and quorum; compensation.

113-315.26. Personnel.

113-315.27. Executive committee.

113-315.28. Purposes of Authority.

113-315.29. Powers of Authority.

113-315.30. Approval of acquisition and disposition of real property.

113-315.31. Issuance of bonds.

113-315.32. Power of eminent domain.

113-315.33. Exchange of property; removal of buildings, etc.

113-315.34. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.

113-315.35. Annual audit; copies to be furnished.

113-315.36. Purchase of supplies, material and equipment.

113-315.37. Liberal construction of Article.

113-315.38. Warehouses, wharves, etc., on property abutting navigable waters.

113-315.39. Taxation.

Article 24.

Miscellaneous Transitional Provisions.

113-316. General statement of purpose and effect of revisions of Subchapter IV made in 1965 and 1979.

113-317 to 113-322. [Repealed.]

113-323 to 113-330. [Reserved.]

Article 25.

[Reserved.]

113-331 to 113-377. [Reserved.]

Article 26.

Marine Fisheries Compact and Commission.

113-377.1 to 113-377.7. [Transferred.]

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

Powers and Duties of Department of Natural Resources and Community Development Generally.

§ 113-24: Repealed by Session Laws 1979, c. 830, s. 5, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively

provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 1B.

Aviation.

§§ 113-28.5 to 113-28.12: Recodified as §§ 63-65 to 63-72 by Session Laws 1979, c. 148, s. 5.

SUBCHAPTER II. STATE FORESTS AND PARKS.

ARTICLE 2.

Acquisition and Control of State Forests and Parks.

§ 113-29. Policy and plan to be inaugurated by Department of Natural Resources and Community Development.

CASE NOTES

Declaratory Judgment Premature. — None of the plaintiffs seeking a declaratory judgment that Article 2 of Chapter 113 and Article 3 of Chapter 113A are unconstitutional

and praying that defendants be permanently enjoined from adopting a "Master Plan" for the Eno River State Park had as yet been directly and adversely affected by the statutes they

sought to challenge, and the plaintiffs failed to show the existence of a genuine controversy cognizable under the Declaratory Judgment Act, where no condemnation proceeding affecting any lands of the plaintiffs had as yet been instituted, and all that had occurred was that employees of the Division of Parks and

Recreation had made initial alternative planning proposals for a State park which contemplated ultimate acquisition of certain lands of the plaintiffs for park purposes. *Barbour v. Little*, 37 N.C. App. 686, 247 S.E.2d 252, cert. denied, 295 N.C. 733, 248 S.E.2d 862 (1978).

§ 113-36. Applications of proceeds from sale of products.

(a) Application of Proceeds Generally. — Except as provided in subsection (b) of this section, all money received from the sale of wood, timber, minerals, or other products from the State forests shall be paid into the State treasury and to the credit of the Department of Natural Resources and Community Development; and such money shall be expended in carrying out the purposes of this Article and of forestry in general, under the direction of the Secretary, Department of Natural Resources and Community Development.

(b) Tree Cone and Seed Purchase Fund. — A percentage of the money obtained from the sale of seedlings and remaining unobligated at the end of a fiscal year, shall be placed in a special, continuing and nonreverting Tree Cone and Seed Purchase Fund under the control and direction of the Secretary, Department of Natural Resources and Community Development. The percentage of the sales placed in the fund shall not exceed ten percent (10%). At the beginning of each fiscal year, the secretary shall select the percentage for the upcoming fiscal year depending upon the anticipated costs of tree cones and seeds which the department must purchase. Money in this fund shall not be allowed to accumulate in excess of the amount needed to purchase a four-year supply of tree cones and seed, and shall be used for no purpose other than the purchase of tree cones and seeds. (1915, c. 253, s. 2; C. S., s. 6125; 1925, c. 122, s. 22; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1981, c. 351, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, designated the former section as subsection (a) and added "Application of Proceeds Generally. — Except

as provided in subsection (b) of this section" at the beginning of that subsection, inserted "the Secretary" near the end of subsection (a) and added subsection (b).

§ 113-39. License fees for hunting and fishing on government-owned property unaffected.

No wording in G.S. 113-307.1(a), or any other North Carolina statute or law, or special act, shall be construed to abrogate the vested rights of the State of North Carolina to collect fees for license for hunting and fishing on any government-owned land or in any government-owned stream in North Carolina including the license for county, State or nonresident hunters or fishermen; or upon any lands or in any streams hereafter acquired by the federal government within the boundaries of the State of North Carolina. The lands and streams within the boundaries of the Great Smoky Mountains National Park to be excepted from this section. (1933, c. 537, s. 2; 1979, c. 830, s. 6.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1980, substituted "G.S.

113-307.1(a)" for "G.S. 113-113" near the beginning of the first sentence.

ARTICLE 4B.

Southeastern Interstate Forest Fire Protection Compact.

§§ 113-60.16 to 113-60.20: Reserved for future codification purposes.

ARTICLE 4C.

*Regulation of Open Fires.***§ 113-60.21. Purpose and findings.**

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that certain counties contain organic soils or forest types which pose greater problems of forest fire and air pollution control and which require additional regulation of open burning, particularly open burning associated with land-clearing operations. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article. (1981, c. 1100, s. 2.)

§ 113-60.22. Definition.

As used in this Article:

- (1) "Department" means the Department of Natural Resources and Community Development.
- (2) "Forest ranger" means the county forest ranger or deputy forest ranger designated under G.S. 113-52.
- (3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.
- (4) "Woodland" means woodland as defined in G.S. 113-57. (1981, c. 1100, s. 2.)

§ 113-60.23. High hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Martin, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with G.S. 113-60.21.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the county forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with G.S. 113-60.25 or 113-60.27.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and

involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with G.S. 113-60.23(b).

- (1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminants from the burning.
- (2) The location of the burning must be at least 1,000 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.
- (3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.
- (4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.
- (5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.
- (6) Initial burning may be commenced only between the hours of 9:00 A.M. and 3:00 P.M. and no combustible material may be added to the fire between 3:00 P.M. on one day and 9:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions. (1981, c. 1100, s. 2.)

§ 113-60.24. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in G.S. 113-60.23(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under G.S. 113-60.25 or 113-60.27. (1981, c. 1100, s. 2.)

§ 113-60.25. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the secretary is authorized to prohibit all open burning regardless of whether a permit is required under G.S. 113-60.23 or 113-60.24. The secretary shall issue a press release containing relevant details of the prohibition to news media serving the area affected. (1981, c. 1100, s. 2.)

§ 113-60.26. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit. (1981, c. 1100, s. 2.)

§ 113-60.27. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the secretary is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the secretary shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits. (1981, c. 1100, s. 2.)

§ 113-60.28. Control of existing fires.

(a) If a fire is set without a permit required by G.S. 113-60.23, 113-60.24 or 113-60.25 and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under G.S. 113-60.23(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under G.S. 113-60.23(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the permittee shall reimburse the Department for the expenses incurred by the Department. (1981, c. 1100, s. 2.)

§ 113-60.29. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned for a period of not more than 30 days, or both, in the discretion of the court. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114 of Article 21B of Chapter 143 of the General Statutes. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 113-60.28. (1981, c. 1100, s. 2.)

§ 113-60.30. Effect on other laws.

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under G.S. 113-60.23(c). (1981, c. 1100, s. 2.)

§ 113-60.31. Exempt fires; no permit fees.

(a) This Article shall not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if such fire shall be confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(b) No charge shall be made for the granting of any permit required by this Article. (1981, c. 1100, s. 2.)

ARTICLE 6.

Fishing Generally.

§ 113-78: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions

upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in

Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

SUBCHAPTER II-A. DISTRIBUTION AND SALE OF HUNTING, FISHING AND TRAPPING LICENSES.

ARTICLE 6B.

License Agents.

§§ 113-81.4 to 113-81.13: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

SUBCHAPTER III. GAME LAWS.

ARTICLE 7.

North Carolina Game Law of 1935.

§§ 113-82 to 113-99: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year

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replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

§ 113-99.1: Recodified as § 113-270.2A.

§§ 113-100 to 113-109: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Repealed § 113-84 was amended by Session Laws 1979, c. 769, and Session Laws 1979, c. 546 deleted a local modification to repealed § 113-84. Repealed § 113-95 was amended by Session Laws 1979, c. 748, s. 1. Repealed § 113-95.2 was amended by Session Laws 1979, c. 748, s. 2. Repealed § 113-95.5 was amended by Session Laws 1979, c. 748, s. 3. Repealed § 113-95.6 was amended by Session Laws 1979, c. 748, s. 4. Repealed § 113-96.1 was amended by Session Laws 1979, c. 748, s. 5.

permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Repealed § 113-104 was amended by Session Laws 1977, 2nd Sess., c. 1211. Repealed § 113-109 was amended by Session Laws 1979, 2nd Sess., c. 1296.

ARTICLE 7A.

Safe Distances for Hunting Migratory Wild Waterfowl.

§§ 113-109.6 to 113-109.8: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those

provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions

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and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 8.

Fox-Hunting Regulations.

§§ 113-110.1 to 113-112: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 9.

Federal Regulations on Federal Lands.

§ 113-113: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

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General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 9A.

Regulation of Trapping.

§§ 113-113.6 to 113-113.14: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 9B.

Regulation of Beaver Taking.

§§ 113-113.20 to 113-113.23: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to

the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

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and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 10.

Regulation of Fur Dealers; Licenses.

§§ 113-114 to 113-120: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively

provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

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For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

ARTICLE 10A.

Trespassing upon "Posted" Property to Hunt, Fish or Trap.

§§ 113-120.1 to 113-120.4: Transferred to §§ 14-159.6 to 14-159.9 by Session Laws 1979, c. 830, s. 11, effective July 1, 1980.

ARTICLE 10B.

Liability of Landowners to Authorized Users.

§§ 113-120.5 to 113-120.7: Repealed by Session Laws 1980, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual

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Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts

and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

Repealed § 113-120.5 was amended by Session Laws 1979, c. 92, s. 1. Repealed § 113-120.6 was amended by Session Laws 1979, c. 92, s. 2.

ARTICLE 11.

Miscellaneous Provisions.

§§ 113-121 to 113-126.1: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Cross References. — For game laws generally effective July 1, 1980, and Aug. 1, 1980, see §§ 113-127 to 113-316. And see note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively

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Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-126.2. Use of artificial lights in areas inhabited by game in certain counties.

(a) Any person who, between the hour of eleven o'clock p.m. on any day and one-half hour before sunrise on the following day, deliberately flashes or displays an artificial light from or attached to a motor-driven conveyance or from any means of conveyance attached to said motor-driven conveyance so as to cast the beam thereof beyond the surface of a roadway or in any field, woodland or forest in an area frequented or inhabited by wild game animals shall be guilty of a misdemeanor. Every person occupying such vehicle or conveyance at the time of such violation shall be deemed *prima facie* guilty of such violation as a principal.

(b) Each person violating the provisions of this section shall, on the first conviction thereof, be fined not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00). Upon a second or subsequent conviction, such person shall be fined not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00) or imprisoned not more than 60 days, or both, in the discretion of the court.

(c) The provisions of this section shall not apply to a person while on land owned by him in fee simple or in which he has a life estate or a person who leases land for agricultural purposes, but the fact of such ownership shall be a matter of defense in any prosecution for violation of this section.

(d) All lawful peace officers of the county and State, including wildlife protectors, shall have authority to arrest for violations of this section.

(e) This section shall apply only to the counties of Gates, Guilford, Polk, Hertford, Johnston, Jones, Northampton, Rowan, Surry, Wayne and Lenoir. (1975, c. 269; 1977, cc. 106, 167; 1979, cc. 441, 556.)

Editor's Note. — This section is codified from Session Laws 1975, c. 269, as amended by Session Laws 1977, cc. 106 and 167, and Session Laws 1979, cc. 441 and 556. Prior to the 1979 amendments, the 1975 act applied to fewer than

ten counties, and was therefore classified as local, and not codified. As to repeal of local game laws effective July 1, 1980, except as expressly provided, see § 113-133.1.

CASE NOTES

Section Held Unconstitutional. — This section is so overbroad as to comprise an arbitrary interference with otherwise innocent conduct, and lacks any rational, real, or substantial relation to the public health, morals, order, safety or general welfare. It does not meet the due process "standard of reason-

ableness" which acts as a limitation upon the exercise of the State's police power, and it, therefore, violates the Fourteenth Amendment to the Constitution of the United States and Section 19 of Article I of the Constitution of North Carolina. *State v. Stewart*, 40 N.C. App. 693, 253 S.E.2d 638 (1979).

SUBCHAPTER IV. CONSERVATION OF MARINE AND ESTUARINE AND WILDLIFE RESOURCES.

Revision of Subchapter. — Articles 12, 13, 20, 21, 22 and 23 of this Subchapter were extensively amended and Article 22A was added by Session Laws 1979, c. 830, s.1, effective, with certain exceptions, July 1, 1980. As required by Session Laws 1979, c. 830, s. 16, Articles which were in any way changed by that act have been set out in full in this Supplement, including those sections not changed. Where no section in an Article was affected by c. 830, the Article has not been set out, except to the extent that that Article was amended by 1979 acts other than c. 830.

Session Laws 1979, c. 830, repealed Article 6 of this Chapter, "Fishing Generally," Subchapter II-A "Distribution and Sale of Hunting, Fishing and Trapping Licenses," comprising Article 6 of this Chapter, and Subchapter III, "Game Laws," comprising Articles 6B through 11. Provisions similar to or covering the subject matter of many of the repealed sections were added by c. 830 in this Subchapter. Where appropriate, the historical citations to the repealed sections have been added to new or amended sections containing similar provisions.

Session Laws 1979, c. 830, is made effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective Aug.

1, 1980; falconry provisions and § 113-291.1, subsection (e1), are effective July 1, 1979. In addition, it has been necessary to include in the revised Articles certain 1979 amendments effective before July 1, 1980. They are:

§ 113-128, subdivisions (1) and (5), as amended by Session Laws 1979, c. 388, effective April 18, 1979.

§ 113-271, subsection (d), as amended by Session Laws 1979, c. 748, s. 6, effective Aug. 1, 1979, and Jan. 1, 1980;

§ 113-271, subsection (e), as added by Session Laws 1979, c. 737, effective Jan. 1, 1980;

§ 113-272, subsection (d), as amended by Session Laws 1979, c. 748, s. 7, effective Jan. 1, 1980;

§ 113-272.1, as amended by Session Laws 1979, c. 748, s. 8, effective Jan. 1, 1980.

Session Laws 1979, c. 830, s. 17, provides:

"Sec. 17. The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act

relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act. The Wildlife Resources Commission is empowered to promulgate regulations and take administrative

actions to implement the provisions of this act as may be necessary prior to the effective dates set out in this section. Immediately upon ratification the commission may expend funds available to it to initiate the studies of fox and fur-bearer populations mandated by G.S. 113-291.4(e). The falconry provisions of this act and G.S. 113-291.1(e1) take effect July 1, 1979."

ARTICLE 12.

General Definitions.

§ 113-127. Application of Article.

Unless the context clearly requires otherwise, the definitions in this Article apply throughout this Subchapter. (1965, c. 957, s. 2.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1,

1979. Section 113-128 as set out in this Article includes an amendment in Session Laws 1979, c. 388, effective April 18, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-128. Definitions relating to agencies and their powers.

The following definitions and their cognates apply to powers and administration of agencies charged with the conservation of marine and estuarine and wildlife resources:

- (1), (2) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (3) Department. — The Department of Natural Resources and Community Development. References to the Department include, when appropriate, the Marine Fisheries Commission.
- (4) Executive Director. — Executive Director, North Carolina Wildlife Resources Commission.
- (5) Inspector. — Marine fisheries inspector.
- (5a) Marine Fisheries Commission. — The Marine Fisheries Commission of the Department as established by Part 5 of Article 7 of Chapter 143B of the General Statutes.
- (5b) Marine Fisheries Inspector. — An employee of the Department, other than a wildlife protector, sworn in as an officer and assigned duties which include exercise of law enforcement powers under this Subchapter. All references in statutes, regulations, contracts, and other legal and official documents to commercial fisheries inspectors and to commercial and sports fisheries inspectors apply to marine fisheries inspectors.
- (6) Notice; Notify. — Where it is required that notice be given an agency of a situation within a given number of days, this places the burden on the person giving notice to make sure that the information is received in writing by a responsible member of the agency within the time limit.
- (7) Protector. — Wildlife protector.

- (8) Secretary. — Secretary of Natural Resources and Community Development.
- (9) Wildlife Protector. — An employee of the North Carolina Wildlife Resources Commission sworn in as an officer and assigned to duties which include exercise of law-enforcement powers.
- (10) Wildlife Resources Commission. — The North Carolina Wildlife Resources Commission as established by Article 24 of Chapter 143 of the General Statutes and Part 3 of Article 7 of Chapter 143B of the General Statutes. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1977, c. 512, s. 5; c. 771, s. 4; 1979, c. 388, s. 1; c. 830, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 388, s. 1, effective April 18, 1979, amended subdivision (1), which defined "Marine Fisheries Inspector," as it stood prior to its repeal.

Session Laws 1979, c. 830, s. 1, deleted subdivisions (1) and (2), effective July 1, 1980.

§ 113-129. Definitions relating to resources.

The following definitions and their cognates apply in the description of the various marine and estuarine and wildlife resources:

- (1) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (1a) Animals. — Wild animals, except when the context clearly indicates a contrary interpretation.
- (1b) Big Game. — Deer, bear, wild boar, and wild turkey.
- (1c) Birds. — Wild birds, except when the context clearly indicates a contrary interpretation.
- (1d) Boating and Fishing Access Area. — An area of land providing access to public waters and which is owned, leased, controlled, or managed by the Wildlife Resources Commission.
- (1e) Bushel. — A dry measure containing 2,150.42 cubic inches.
- (2) Coastal Fisheries. — Any and every aspect of cultivating, taking, possessing, transporting, processing, selling, utilizing, and disposing of fish taken in coastal fishing waters, whatever the manner or purpose of taking, except for the regulation of inland game fish in coastal fishing waters which is vested in the Wildlife Resources Commission; and all such dealings with fish, wherever taken or found, by a person primarily concerned with fish taken in coastal fishing waters so as to be placed under the administrative supervision of the Department. Provided, that the Department is given no authority over the taking of fish in inland fishing waters. Except as provisions in this Subchapter or in regulations of the Marine Fisheries Commission authorized under this Subchapter may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fisheries apply to coastal fisheries.
- (3) Coastal Fishing. — All fishing in coastal fishing waters. Except as provisions in this Subchapter or in regulations of the Department of Natural Resources and Community Development authorized under this Subchapter may make such references inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing apply to coastal fishing.
- (4) Coastal Fishing Waters. — The Atlantic Ocean; the various coastal sounds; and estuarine waters up to the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission.

Except as provisions in this Subchapter or changes in the agreement between the Marine Fisheries Commission and the Wildlife Resources Commission may make such reference inapplicable, all references in statutes, regulations, contracts, and other legal or official documents to commercial fishing waters apply to coastal fishing waters.

- (5) Crustaceans. — Crustacea, specifically including crabs, lobster, and shrimp.
- (6) Fisheries Resources. — Marine and estuarine resources and such wildlife resources as relate to fish.
- (7) Fish; Fishes. — All marine mammals; all shellfish; all crustaceans; and all other fishes.
- (7a) Fur-bearing Animals. — Beaver, mink, muskrat, nutria, otter, skunk, and weasel; bobcat, opossum, and raccoon when lawfully taken with traps.
- (7b) Game. — Game animals and game birds.
- (7c) Game Animals. — Bear, deer, fox, rabbit, squirrel, and wild boar; bobcat, opossum, and raccoon except when trapped in accordance with provisions relating to fur-bearing animals.
- (7d) Game Birds. — Migratory game birds and upland game birds.
- (8) Game Fish. — Inland game fish and such other game fish in coastal fishing waters as may be regulated by the Department.
- (8a) Game Lands. — Lands owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission for public hunting, trapping, or fishing.
- (9) Inland Fishing Waters. — All inland waters except private ponds; and all waters connecting with or tributary to coastal sounds or the ocean extending inland or upstream from:
 - a. The dividing line between coastal fishing waters and inland fishing waters agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission; or
 - b. North Carolina's boundary with another state.
- (10) Inland Game Fish. — Those species of freshwater fish, wherever found, and migratory saltwater fish, when found in inland fishing waters, as to which there is an important element of sport in taking and which are denominated as game fish in the regulations of the Wildlife Resources Commission. No species of fish of commercial importance not classified as a game fish in commercial fishing waters as of January 1, 1965, may be classified as an inland game fish in coastal fishing waters without the concurrence of the Department.
- (10a) Joint Fishing Waters. — Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission in accordance with G.S. 113-132(e).
- (11) Marine and Estuarine Resources. — All fish, except inland game fish, found in the Atlantic Ocean and in coastal fishing waters; all fisheries based upon such fish; all uncultivated or undomesticated plant and animal life, other than wildlife resources, inhabiting or dependent upon coastal fishing waters; and the entire ecology supporting such fish, fisheries, and plant and animal life.
- (11a) Migratory Birds. — All birds, whether or not raised in captivity, included in the terms of conventions between the United States and any foreign country for the protection of migratory birds and the Migratory Bird Treaty Act, as defined and listed in Part 10 of Title 50 of the Code of Federal Regulations.
- (11b) Migratory Game Birds. — Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging to the following families:

- a. Anatidae (wild ducks, geese, brant, and swans);
- b. Columbidae (wild doves and pigeons);
- c. Gruidae (little brown cranes);
- d. Rallidae (rails, coots, and gallinules); and
- e. Scolopacidae (woodcock and snipe).

The Wildlife Resources Commission is authorized to modify this definition from time to time by regulations only as necessary to keep it in conformity with governing federal laws and regulations pertaining to migratory game birds.

- (11c) Nongame Animals. — All wild animals except game and fur-bearing animals.
- (11d) Nongame Birds. — All wild birds except game birds.
- (12) Nongame Fish. — All fish found in inland fishing waters other than inland game fish.
- (13) Private Pond. — A body of water arising within and lying wholly upon a single tract of privately owned land, from which fish cannot escape and into which fish cannot enter from public fishing waters at any time, except that all publicly owned ponds and lakes are classified as public fishing waters. In addition, the private owners of abutting tracts of land on which a pond not exceeding 10 acres is or has been established may by written agreement cooperate to maintain that pond as a private pond if it otherwise meets the requirements of this definition. If a copy of the agreement has been filed with the Wildlife Resources Commission and the pond in fact meets the requirements of this definition, it attains the status of private pond either 60 days after the agreement has been filed or upon the Commission's approving it as private, whichever occurs first.
- (13a) Public Fishing Waters; Public Waters. — Coastal fishing waters, inland fishing waters, or both.
- (13b) Public Hunting Grounds. — Privately owned lands open to the public for hunting under the terms of a cooperative agreement between the owner and the Wildlife Resources Commission.
- (13c) Raptor. — A migratory bird of prey authorized under federal law and regulations for the taking of quarry by falconry.
- (14) Shellfish. — Mollusca, specifically including oysters, clams, mussels, and scallops.
- (14a) [Reserved.]
- (14b) Upland Game Birds. — Grouse, pheasant, quail, and wild turkey.
- (15) Wild Animals. — Game animals; fur-bearing animals; and all other wild mammals except marine mammals found in coastal fishing waters. In addition, this definition includes members of the following groups which are on the federal list of endangered or threatened species: wild amphibians, wild reptiles except sea turtles inhabiting and depending upon coastal fishing waters, and wild invertebrates except invertebrates declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede valid provisions of law or regulation administered by any other agency.
- (15a) Wild Birds. — Migratory game birds; upland game birds; and all undomesticated feathered vertebrates. The Wildlife Resources Commission may by regulation list specific birds or classes of birds excluded from the definition of wild birds based upon the need for protection or regulation in the interests of conservation of wildlife resources.

- (16) **Wildlife.** — Wild animals; wild birds; all fish found in inland fishing waters; and inland game fish. Unless the context clearly requires otherwise, the definitions of wildlife, wildlife resources, wild animals, wild birds, fish, and the like are deemed to include species normally wild, or indistinguishable from wild species, which are raised or kept in captivity. Nothing in this definition is intended to abrogate the exclusive authority given the Department of Agriculture to regulate the production and sale of pen-raised quail for food purposes.
- (16a) **Wildlife Refuge.** — An area of land or waters owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission which is closed to the taking of some or all species of wildlife.
- (17) **Wildlife Resources.** — All wild birds; all wild mammals other than marine mammals found in coastal fishing waters; all fish found in inland fishing waters, including migratory saltwater fish; all inland game fish; all uncultivated or undomesticated plant and animal life inhabiting or depending upon inland fishing waters; waterfowl food plants wherever found, except that to the extent such plants in coastal fishing waters affect the conservation of marine and estuarine resources the Department is given concurrent jurisdiction as to such plants; all undomesticated terrestrial creatures; and the entire ecology supporting such birds, mammals, fish, plant and animal life, and creatures. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, inserted "and which is" in subdivision (1d).

§ 113-130. Definitions relating to activities of public.

The following definitions and their cognates apply to activities of the public in regard to marine and estuarine and wildlife resources:

- (1) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.
- (1a) **Falconry.** — The sport of taking quarry by means of a trained raptor.
- (1b) **Individual.** — A human being.
- (1c) **Landholder.** — Any individual, resident or nonresident, owning land in this State or, when he is the one principally engaged in cultivating the land, leasing land in this State for agricultural purposes.
- (2) **Owner; Ownership.** — As for personal property, refers to persons having beneficial ownership and not to those holding legal title for security; as for real property, refers to persons having the present right of control, possession, and enjoyment, whether as life tenant, fee holder, beneficiary of a trust, or otherwise. Provided, that this definition does not include lessees of property except where the lease arrangement is a security device to facilitate what is in substance a sale of the property to the lessee.
- (3) **Person.** — Any individual; or any partnership, firm, association, corporation, or other group of individuals capable of suing or being sued as an entity.
- (4) **Resident.** — In the case of:
 - a. **Individuals.** — One who at the time in question has resided in North Carolina for the preceding six months or has been domiciled in North Carolina for the preceding 60 days. When domicile in the State for a period of 60 days up to six months is the basis for establishing residence, the individual must sign a certificate on a form supplied by the Department or the Wildlife Resources

Commission, as the case may be, stating the necessary facts and the intent to establish domicile here.

- b. Corporations. — A corporation which is chartered under the laws of North Carolina and has its principal office within the State.
- c. Partnerships. — A partnership in which all partners are residents of North Carolina and which has its principal office in the State.
- d. Other Associations and Groups Fitting the Definition of Person. — An association or group principally composed of individual residents of North Carolina, with its principal office, if any, in the State, and organized for a purpose that contemplates more involvement or contact with this State than any other state.
- e. Military Personnel and Their Dependents. — A member of the armed forces of the United States stationed at a military facility in North Carolina, his spouse, and any dependent under 18 years of age residing with him are deemed residents of the State, of the county in which they live, and also, if different, of any county in which the military facility is located.
- (4a) To Buy; Purchase. — Includes a purchase or exchange of property, or an offer or attempt to purchase or exchange, for money or any other valuable consideration.
- (5) To Fish. — To take fish.
- (5a) To Hunt. — To take wild animals or wild birds.
- (6) To Sell; Sale. — Includes a sale or exchange of property, or an offer or attempt to sell or exchange — for money or any other valuable consideration.
- (7) To Take. — All operations during, immediately preparatory, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any fisheries resources or wildlife resources.
- (7a) To Trap. — To take wild animals or wild birds by trapping.
- (8) Vessel. — Every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water. (1965, c. 957, s. 2; 1971, c. 705, s. 3; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

ARTICLE 13.

Jurisdiction of Conservation Agencies.

§ 113-131. Resources belong to public; stewardship of conservation agencies.

The marine and estuarine and wildlife resources of the State belong to the people of the State as a whole. The Department and the Wildlife Resources Commission are charged with stewardship of these resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to

annual licenses which expire July 31 are effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of

Subchapter," immediately preceding Article 12 State's interest in wild animals, see 2 Campbell
of this Chapter. L. Rev. 151 (1980).

Legal Periodicals. — For a note on the

CASE NOTES

Applied in *In re Gales Creek Community Ass'n*, 300 N.C. 267, 266 S.E.2d 645 (1980).

§ 113-132. Jurisdiction of fisheries agencies.

(a) The Department has jurisdiction over the conservation of marine and estuarine resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of marine and estuarine resources.

(b) The Wildlife Resources Commission has jurisdiction over the conservation of wildlife resources. Except as may be otherwise provided by law, it has jurisdiction over all activities connected with the conservation and regulation of wildlife resources.

(c) Notwithstanding the provisions of this Article, this Subchapter does not give the Marine Fisheries Commission or the Wildlife Resources Commission jurisdiction over matters clearly within the jurisdiction vested in the Department of Agriculture, the North Carolina Pesticide Board, the Commission for Health Services, the Environmental Management Commission, or other division of the Department regulating air or water pollution.

(d) To the extent that the grant of jurisdiction to the Department and the Wildlife Resources Commission may overlap, the Department and the Wildlife Resources Commission are granted concurrent jurisdiction. In cases of conflict between actions taken or regulations promulgated by either agency, as respects the activities of the other, pursuant to the dominant purpose of such jurisdiction, the Department and the Wildlife Resources Commission are empowered to make agreements concerning the harmonious settlement of such conflict in the best interests of the conservation of the marine and estuarine and wildlife resources of the State. In the event the Department and the Wildlife Resources Commission cannot agree, the Governor is empowered to resolve the differences.

(e) Those coastal fishing waters in which are found a significant number of freshwater fish, as agreed upon by the Marine Fisheries Commission and the Wildlife Resources Commission, may be denominated joint fishing waters. These waters are deemed coastal fishing waters from the standpoint of laws and regulations administered by the Department and are deemed inland fishing waters from the standpoint of laws and regulations administered by the Wildlife Resources Commission. The Marine Fisheries Commission and the Wildlife Resources Commission may make joint regulations governing the responsibilities of each agency and modifying the applicability of licensing and other regulatory provisions as may be necessary for rational and compatible management of the marine and estuarine and wildlife resources in joint fishing waters.

(f) The granting of jurisdiction in this section pertains to the power of agencies to enact regulations and ordinances. Nothing in this section or in G.S. 113-138 is designed to prohibit law-enforcement officers who would otherwise have jurisdiction from making arrests or in any manner enforcing the provisions of this Subchapter. (1965, c. 957, s. 2; 1973, c. 476, s. 128; c. 1262, ss. 18, 28, 38; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

CASE NOTES

Applied in *In re Gales Creek Community Ass'n*, 300 N.C. 267, 266 S.E.2d 645 (1980).

§ 113-133. Abolition of local coastal fishing laws.

The enjoyment of the marine and estuarine resources of the State belongs to the people of the State as a whole and is not properly the subject of local regulation. As the Department is charged with administering the governing statutes and promulgating regulations in a manner to reconcile as equitably as may be the various competing interests of the people as regards these resources, considering the interests of those whose livelihood depends upon full and wise use of renewable and nonrenewable resources and also the interests of the many whose approach is recreational, all special, local, and private acts and ordinances regulating the conservation of marine and estuarine resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of marine and estuarine resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. (1965, c. 957, s. 2.)

§ 113-133.1. Limitations upon local regulation of wildlife resources; certain local acts retained.

(a) The enjoyment of the wildlife resources of the State belongs to all of the people of the State.

(b) The Wildlife Resources Commission is charged with administering the governing statutes in a manner to serve as equitably as may be the various competing interests of the people regarding wildlife resources, considering the interests of those whose livelihood depends upon full and wise use of renewable resources and the interests of the many whose approach is recreational. Thus, except as provided in subsection (e), all special, local, and private acts and ordinances enacted prior to the ratification date of the act creating this section regulating the conservation of wildlife resources are repealed. Nothing in this section is intended to invalidate local legislation or local ordinances which exercise valid powers over subjects other than the conservation of wildlife resources, even though an incidental effect may consist of an overlapping or conflict of jurisdiction as to some particular provision not essential to the conservation objectives set out in this Subchapter. In particular, this section does not repeal local acts which restrict hunting primarily for the purpose of protecting travelers on the highway, landowners, or other persons who may be endangered or affected by hunters' weapons or ammunition or whose property may be damaged.

(c) This Subchapter is intended to express State policy relating to the conservation of wildlife resources. Nothing in this section is intended to repeal or prevent the enactment of any city or county ordinance otherwise validly authorized which has only a minor and incidental impact on the conservation of marine and estuarine and wildlife resources. This section does not repeal G.S. 153A-127, G.S. 153A-131, G.S. 160A-182, G.S. 160A-187, and G.S. 160A-188, nor any local act establishing bird sanctuaries, except that local authorities operating bird sanctuaries may not regulate the taking of game or otherwise abrogate valid laws and regulations pertaining to the conservation of wildlife resources.

(d) Nothing in this Subchapter is intended to repeal or abridge the regulatory authority of the Game Commission of Currituck County or the Dare County Game and Wildlife Commission.

(e) Because of strong community interest expressed in their retention, the local acts or portions of local acts listed in this section are not repealed. The following local acts are retained to the extent they apply to the county for which listed:

Alleghany: Session Laws 1951, Chapter 665; Session Laws 1977, Chapter 526; Session Laws 1979, Chapter 556.

Anson: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 286.

Ashe: Former G.S. 113-111; Session Laws 1951, Chapter 665.

Avery: Former G.S. 113-122.

Beaufort: Session Laws 1947, Chapter 466, as amended by Session Laws 1979, Chapter 219; Session Laws 1957, Chapter 1364; Session Laws 1971, Chapter 173; Session Laws 1977, Chapter 90.

Bertie: Session Laws 1955, Chapter 1376; Session Laws 1975, Chapter 287.

Bladen: Public-Local Laws 1933, Chapter 550, Section 2 (as it pertains to fox seasons); Session Laws 1961, Chapter 348, (as it applies to Bladen residents fishing in Robeson County); Session Laws 1961, Chapter 1023; Session Laws 1971, Chapter 384.

Brunswick: Session Laws 1975, Chapter 218.

Buncombe: Public-Local Laws 1917, Chapter 658, Section 2; Public-Local Laws 1933, Chapter 308; Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Burke: Public-Local Laws 1921, Chapter 454; Public-Local Laws 1921 (Extra Session), Chapter 213, Section 3 (with respect to fox seasons); Public-Local Laws 1933, Chapter 422, Section 3; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636.

Caldwell: Former G.S. 113-122; Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 507.

Camden: Session Laws 1955, Chapter 362 (to the extent it applies to inland fishing waters); Session Laws 1967, Chapter 441.

Carteret: Session Laws 1955, Chapter 1036; Session Laws 1977, Chapter 695.

Caswell: Public-Local Laws 1933, Chapter 311; Public-Local Laws 1937, Chapter 411.

Catawba: Former G.S. 113-111, as amended by Session Laws 1955, Chapter 1037.

Chatham: Public-Local Laws 1937, Chapter 236; Session Laws 1963, Chapter 271.

Chowan: Session Laws 1979, Chapter 184; Session Laws 1979, Chapter 582.

Cleveland: Public Laws 1907, Chapter 388; Session Laws 1951, Chapter 1101; Session Laws 1979, Chapter 587.

Columbus: Session Laws 1951, Chapter 492, as amended by Session Laws 1955, Chapter 506.

Craven: Session Laws 1971, Chapter 273, as amended by Session Laws 1971, Chapter 629.

Cumberland: Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 471.

Currituck: Session Laws 1959, Chapter 545; Session Laws 1977, Chapter 494; Session Laws 1979, Chapter 582.

Dare: Session Laws 1973, Chapter 258; Session Laws 1973, Chapter 259; Session Laws 1979, Chapter 582.

Davie: Former G.S. 113-111, as amended by Session Laws 1947, Chapter 333.

Duplin: Session Laws 1965, Chapter 774; Session Laws 1973 (Second Session 1974), Chapter 1266; Session Laws 1979, Chapter 466.

Edgecombe: Session Laws 1961, Chapter 408.

Gates: Session Laws 1959, Chapter 298; Session Laws 1973, Chapter 124, amending Session Laws 1969, Chapter 121; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748.

Granville: Session Laws 1963, Chapter 670.

Greene: Session Laws 1975, Chapter 219; Session Laws 1979, Chapter 360.

Halifax: Public-Local Laws 1925, Chapter 571, Section 3 (with respect to fox-hunting seasons); Session Laws 1947, Chapter 954; Session Laws 1955, Chapter 1376; Session Laws 1959, Chapter 1304.

Harnett: Former G.S. 113-111, as modified by Session Laws 1977, Chapter 636.

Haywood: Former G.S. 113-111, as modified by Session Laws 1963, Chapter 322.

Henderson: Former G.S. 113-111.

Hertford: Session Laws 1959, Chapter 298; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67.

Hoke: Session Laws 1963, Chapter 267.

Hyde: Public-Local Laws 1929, Chapter 354, Section 1 (as it relates to foxes); Session Laws 1951, Chapter 932; Session Laws 1977, Chapter 412.

Iredell: Session Laws 1979, Chapter 577.

Jackson: Session Laws 1965, Chapter 765; Session Laws 1971, Chapter 424.

Johnston: Session Laws 1975, Chapter 342.

Jones: Session Laws 1979, Chapter 441.

Lee: Session Laws 1963, Chapter 271; Session Laws 1977, Chapter 636.

Lenoir: Session Laws 1979, Chapter 441.

Lincoln: Public-Local Laws 1925, Chapter 449, Sections 1 and 2; Session Laws 1955, Chapter 878.

Madison: Public-Local Laws 1925, Chapter 418, Section 4; Session Laws 1951, Chapter 1040.

Martin: Session Laws 1955, Chapter 1376; Session Laws 1977, Chapter 636; Session Laws 1979, Chapter 568.

Mitchell: Session Laws 1965, Chapter 608, as amended by Session Laws 1977, Chapter 68.

Montgomery: Session Laws 1955, Chapter 692; Session Laws 1977 (Second Session 1978), Chapter 1142.

Nash: Session Laws 1961, Chapter 408.

New Hanover: Session Laws 1971, Chapter 559; Session Laws 1975, Chapter 95.

Northampton: Session Laws 1955, Chapter 1376; Session Laws 1959, Chapter 1304; Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 748; Session Laws 1977, Chapter 67; Session Laws 1979, Chapter 548.

Onslow: Public-Local Laws 1939, Chapter 606.

Orange: Public-Local Laws 1913, Chapter 547.

Pamlico: Session Laws 1977, Chapter 636.

Pasquotank: Session Laws 1979, Chapter 582.

Pender: Session Laws 1961, Chapter 333; Session Laws 1967, Chapter 229; Session Laws 1969, Chapter 258, as amended by Session Laws 1973, Chapter 420; Session Laws 1977, Chapter 585; Session Laws 1977, Chapter 805; Session Laws 1979, Chapter 546.

Perquimans: Former G.S. 113-111; Session Laws 1973, Chapter 160; Session Laws 1973, Chapter 264; Session Laws 1979, Chapter 582.

Polk: Session Laws 1975, Chapter 397; Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Randolph: Public-Local Laws 1919, Chapter 76; Public-Local Laws 1941, Chapter 246; Session Laws 1947, Chapter 920.

Robeson: Public-Local Laws 1924 (Extra Session), Chapter 92; Session Laws 1961, Chapter 348.

Rockingham: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310.

Rowan: Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 106, and Session Laws 1977, Chapter 500; Session Laws 1979, Chapter 556.

Rutherford: Session Laws 1973, Chapter 114; Session Laws 1975, Chapter 397.

Sampson: Session Laws 1979, Chapter 373.

Scotland: Session Laws 1959, Chapter 1143; Session Laws 1977, Chapter 436.

Stokes: Former G.S. 113-111; Public-Local Laws 1933, Chapter 310; Session Laws 1977, Chapter 434; Session Laws 1979, Chapter 556.

Surry: Public-Local Laws 1925, Chapter 474, Section 6 (as it pertains to fox seasons); Session Laws 1975, Chapter 269, as amended by Session Laws 1977, Chapter 167.

Swain: Public-Local Laws 1935, Chapter 52; Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238, as modified by Session Laws 1949, Chapter 228; Session Laws 1953, Chapter 270; Session Laws 1965, Chapter 765.

Transylvania: Public Laws 1935, Chapter 107, Section 2, as amended by Public Laws 1935, Chapter 238.

Tyrrell: Former G.S. 113-111; Session Laws 1953, Chapter 685; Session Laws 1979, Chapter 582.

Wake: Session Laws 1973 (Second Session 1974), Chapter 1382.

Washington: Session Laws 1947, Chapter 620; Session Laws 1979, Chapter 582.

Wayne: Session Laws 1975, Chapter 269; Session Laws 1975, Chapter 342, as amended by Session Laws 1977, Chapter 43; Session Laws 1975, Chapter 343, as amended by Session Laws 1977, Chapter 45; Session Laws 1977, Chapter 695.

Wilkes: Former G.S. 113-111, as amended by Session Laws 1971, Chapter 385; Session Laws 1951, Chapter 665; Session Laws 1973, Chapter 106; Session Laws 1979, Chapter 507.

Yadkin: Former G.S. 113-111, as amended by Session Laws 1953, Chapter 199; Session Laws 1979, Chapter 507.

Yancey: Session Laws 1965, Chapter 522.

(f) The Wildlife Resources Commission is directed to review periodically all local acts affecting conservation of wildlife resources and notify local authorities and the General Assembly as to those that:

- (1) Substantially duplicate provisions of this Subchapter.
- (2) Seriously conflict with conservation policies set out in this Subchapter.
- (3) Seriously conflict with conservation policies developed for the people of this State as a whole by the Wildlife Resources Commission.

(g) Notwithstanding G.S. 113-133.1(b), Chapter 565 of the Session Laws of 1977 is retained in effect. The following local conservation acts which specify that they must be specifically repealed are so repealed: Chapters 434 and 441 of the Session Laws of 1977. To provide for their retention or repeal in accordance with provisions applying to all other local wildlife acts, the following acts are amended to repeal the cited sections: Section 11, Chapter 258, Session Laws of 1969; and Section 4, Chapter 585, Session Laws of 1977. (1979, c. 830, ss. 1, 14; 1979, 2nd Sess., c. 1285, ss. 2, 11; c. 1324, s. 2; 1981, c. 249, s. 2; c. 250, s. 2.)

Effect of Amendments. — The first 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "Session Laws 1979, Chapter 556" for "Session Laws 1979, Chapter 578" in the paragraph relating to Alleghany County, substituted "Public-Local Laws 1925" for

"Public-Local Laws 1929" in the paragraph relating to Halifax County, added the paragraph relating to Johnston County, deleted "Public-Local Laws 1917, Chapter 673" in the paragraph relating to New Hanover County, substituted "Session Laws 1979, Chapter 556" for "Session Laws 1979, Chapter 578" in the paragraph relating to Rowan County, and substituted "Session Laws 1979, c. 556" for "Session Laws 1979, Chapter 578" in the paragraph relating to Stokes County, all in subsection (e). In subsection (g), the amendment deleted a reference to Session Laws 1977, c. 443, in the first sentence and added the reference to Session Laws 1977, c. 434, s. 4, in the third sentence.

The second 1979, 2nd Sess., amendment deleted a reference to Session Laws 1979, c. 146, in the paragraphs relating to Rutherford, Cleveland and Polk counties. The second 1979, 2nd Sess., amendatory act also repealed Session Laws 1979, c. 146.

The first 1981 amendment deleted "Moore: Session Laws 1955, Chapter 692" in subsection (e).

The second 1981 amendment deleted a reference to Session Laws 1979, Chapter 582, in the paragraph relating to Camden County in subsection (e).

§ 113-134. Regulations.

The Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, are empowered to promulgate regulations implementing the provisions of this Chapter, within the limits of the jurisdiction granted in this Article. (1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., 1878; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 28.)

§ 113-134.1. Jurisdiction over marine fisheries resources in Atlantic Ocean.

The Department is directed to exercise all enforcement and regulatory authority over the conservation of marine fisheries resources in the Atlantic Ocean to the seaward extent of the State jurisdiction over the resources as now or hereafter defined. Marine fisheries inspectors may enforce these regulations and all other provisions of law applicable under the authority granted in this section in the same manner and with the same powers elsewhere granted them as enforcement officers. (1973, c. 1315; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

§ 113-135. General penalties for violating Subchapter or regulations; increased penalty for prior convictions; interpretive provisions.

(a) Any person who violates any provision of this Subchapter or any regulation adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that punishment for violation of the regulations of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

- (1) For a first conviction, a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) or imprisonment not to exceed 30 days.
- (2) For a second or subsequent conviction within three years, a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(b) In interpreting this section, provisions elsewhere in this Subchapter making an offense a misdemeanor "punishable in the discretion of the court" must be considered to set a different level of punishment, to be interpreted in the light of G.S. 14-3 or any equivalent or successor statute. Noncriminal

sanctions, however, such as license revocation or suspension, and exercise of powers auxiliary to criminal prosecution, such as seizure of property involved in the commission of an offense, do not constitute different levels of punishment so as to oust criminal liability. Any previous conviction of an offense under this Subchapter, or under regulations authorized by it, serves to increase the punishment under subsection (a) even though for a different offense than the second or subsequent one.

(c) For the purposes of this Subchapter, violations of laws or regulations administered by the Wildlife Resources Commission under any former general or local law replaced by the present provisions of this Subchapter are deemed to be violations of laws or regulations under this Subchapter. (1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1979, c. 830, s. 1.)

Cross References. — As to failure to remove posted signs from nonregistered property, see § 113-282; as to hunting or fishing on registered property without permission, see § 113-285.

§ 113-135.1. Limitation upon penalty for offense created by regulations of Wildlife Resources Commission in certain instances.

(a) To prevent unsuspecting members of the public from being subject to harsh criminal penalties for offenses created by regulations of the Wildlife Resources Commission, the penalty for an offense which is solely a violation of regulations of the Wildlife Resources Commission is limited to a fine of ten dollars (\$10.00) except that offenses set out in [subsection] (b) are punished as set forth in G.S. 113-135 or other sections.

(b) The limitation upon penalty does not apply to any regulation violation:

- (1) Punishable under G.S. 113-294 or otherwise involving aggravating elements which result in a greater punishment than provided by G.S. 113-135;
- (2) Which involves a defendant subject to the collection-license provisions of G.S. 113-272.4 or who is a dealer as defined in G.S. 113-273; or
- (3) Relating to seasons, bag limits, creel limits, taking fish other than with hook and line, buying or selling wildlife, possessing or transporting live wildlife, taking wildlife at night or with the aid of a conveyance, or falconry. (1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

§ 113-136. Enforcement authority of inspectors and protectors; refusal to obey or allow inspection by inspectors and protectors.

(a) Inspectors and protectors are granted the powers of peace officers anywhere in this State, and beyond its boundaries to the extent provided by law, in enforcing all matters within their respective subject-matter jurisdiction as set out in this section.

(b) The jurisdiction of inspectors extends to all matters within the jurisdiction of the Department set out in this Subchapter, Part 5 of Article 7 of Chapter 143B of the General Statutes, and Article 2 of Chapter 77 of the General Statutes, and to all other matters within the jurisdiction of the Department

which it directs inspectors to enforce. In addition, inspectors have jurisdiction over all offenses involving property of or leased to or managed by the Department in connection with the conservation of marine and estuarine resources.

(c) The jurisdiction of protectors extends to all matters within the jurisdiction of the Wildlife Resources Commission, whether set out in this Chapter, Chapter 75A, Chapter 143, Chapter 143B, or elsewhere. The Wildlife Resources Commission is specifically granted jurisdiction over all aspects of:

- (1) Boating and water safety;
- (2) Hunting and trapping;
- (3) Fishing, exclusive of fishing under the jurisdiction of the Marine Fisheries Commission; and
- (4) Activities in woodlands and on inland waters governed by G.S. 113-60.1 to G.S. 113-60.3.

In addition, protectors have jurisdiction over all offenses involving property of or leased by the Wildlife Resources Commission or occurring on wildlife refuges, game lands, or boating and fishing access areas managed by the Wildlife Resources Commission. The authority of protectors over offenses on public hunting grounds is governed by the jurisdiction granted the Commission in G.S. 113-264(c).

(d) Inspectors and protectors are additionally authorized to arrest without warrant under the terms of G.S. 15A-401(b) for felonies, for breaches of the peace, for assaults upon them or in their presence, and for other offenses evincing a flouting of their authority as enforcement officers or constituting a threat to public peace and order which would tend to subvert the authority of the State if ignored. In particular, they are authorized, subject to the direction of the administrative superiors, to arrest for violations of G.S. 14-223, 14-225, 14-269, and 14-277.

(e) Inspectors and protectors may serve arrest warrants, search warrants, orders for arrest, criminal summonses, subpoenas, and all other process connected with any cases within their subject-matter jurisdiction. In the exercise of their law enforcement powers, inspectors are subject to provisions relating to police officers in general set out in Chapter 15, Chapter 15A, and elsewhere.

(f) Inspectors and protectors are authorized to stop temporarily any persons they reasonably believe to be engaging in activity regulated by their respective agencies to determine whether such activity is being conducted within the requirements of the law, including license requirements. If the person stopped is in a motor vehicle being driven at the time and the inspector or protector in question is also in a motor vehicle, the inspector or protector is required to sound a siren or activate a special light, bell, horn, or exhaust whistle approved for law-enforcement vehicles under the provisions of G.S. 20-125(b) or 20-125(c).

(g) Protectors may not temporarily stop or inspect vehicles proceeding along primary highways of the State without clear evidence that someone within the vehicle is or has recently been engaged in an activity regulated by the Wildlife Resources Commission. Inspectors may temporarily stop vehicles, boats, airplanes, and other conveyances upon reasonable grounds to believe that they are transporting taxable seafood products; they are authorized to inspect any seafood products being transported to determine whether they were taken in accordance with law and to require exhibition of any applicable license, tax receipts, permits, bills of lading, or other identification required to accompany such seafood products.

(h), (i) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(j) The refusal of any person to stop in obedience to the directions of an inspector or protector acting under the authority of this section is unlawful. A violation of this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 30 days, or both.

(k) It is unlawful to refuse to exhibit upon request by any inspector, protector, or other law enforcement officer any item required to be carried by any law or regulation as to which inspectors or protectors have enforcement jurisdiction. The items that must be exhibited include boating safety or other equipment or any license, permit, tax receipt, certificate, or identification. It is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect weapons, equipment, fish, or wildlife that the officer reasonably believes to be possessed incident to an activity regulated by any law or regulation as to which inspectors and protectors have enforcement jurisdiction.

(l) Nothing in this section authorizes searches within the curtilage of a dwelling or of the living quarters of a vessel in contravention of constitutional prohibitions against unreasonable searches and seizures. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1957, c. 1423, s. 2; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28, 86; c. 1286, s. 17; c. 1297; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

Cross References. — As to issuance of warning tickets, see § 113-140.

Editor's Note. — Section 20-125(c), referred

to in subsection (f) of this section, was repealed, effective Oct. 1, 1979, by Session Laws 1979, c. 653, s. 2.

§ 113-137. Search on arrest; seizure and confiscation of property; disposition of confiscated property.

(a) Every inspector or protector who arrests a person for an offense as to which he has enforcement jurisdiction is authorized to search the person arrested and the surrounding area for weapons and for fruits, instrumentalities, and evidence of any crime for which the person arrested is or might have been arrested.

(b) Every inspector or protector who issues a citation instead of arresting a person, in cases in which the inspector or protector is authorized to arrest, may seize all lawfully discovered evidence, fruits, and instrumentalities of any crime as to which he has arrest jurisdiction and probable cause.

(c) Every inspector or protector who in the lawful pursuit of his duties has probable cause for believing he has discovered a violation of the law over which he has jurisdiction may seize in connection therewith any fish, wildlife, weapons, equipment, vessels, or other evidence, fruits, or instrumentalities of the crime, notwithstanding the absence of any person in the immediate area subject to arrest or the failure or inability of the inspector or protector to capture or otherwise take custody of the person guilty of the violation in question. Where the owner of such property satisfies the Secretary or the Executive Director, as the case may be, of his ownership and that he had no knowledge or culpability in regard to the offense involving the use of his property, such property must be returned to the owner. If after due diligence on the part of employees of the Department or the Wildlife Resources Commission, as the case may be, the identity or whereabouts of the violator or of the owner of the property seized cannot be determined, such property may be sold by the Department or the Wildlife Resources Commission in accordance with the provisions of this section.

(d) The Marine Fisheries Commission and the Wildlife Resources Commission may provide by regulation for summary disposition of live or perishable fish or wildlife seized by an inspector or protector. If the property seized consists of live fish which may again be placed to the benefit of the public on public fishing bottoms or in public waters, the inspector or protector may require the person in possession of the seized live fish to transport it the distance necessary to effect placement on appropriate bottoms or waters. In the event of refusal by the person in question to transport the fish, the inspector

or protector must take appropriate steps to effect the transportation. The steps may include seizure of any conveyance or vessel of the person refusing to transport the fish if the conveyance or vessel was one on which the fish were located or was used to take or transport the fish. When a conveyance or vessel is seized, it is to be safeguarded by the inspector or protector seizing it pending trial and it becomes subject to the orders of the court. Transportation costs borne by the department or by the Wildlife Resources Commission, as the case may be, may be collected by the agency from the proceeds of the sale of any other property of the defendant seized and sold in accordance with the provisions of this section.

Except as provided in subsection (g), when the seizure consists of edible fish or wildlife which is not alive, may not live, or may not otherwise benefit conservation objectives if again placed on open lands, on public fishing bottoms, or in public fishing waters, the inspector or protector must dispose of the property in a charitable or noncommercial manner in accordance with the directions of his administrative superiors.

(e) Except as otherwise specifically provided in this section, all property seized must be safeguarded pending trial by the inspector or protector initiating the prosecution. Upon a conviction the property seized in connection with the offense in question is subject to the disposition ordered by the court. Upon an acquittal, property seized must be returned to the defendant or established owner, except:

- (1) Where the property was summarily disposed of in accordance with subsection (d);
- (2) Where possession of the property by the person to whom it otherwise would be returned would constitute a crime; and
- (3) Where the property seized has been sold in accordance with subsection (g). In this event the net proceeds of the sale must be returned to the defendant or established owner, as the case may be.

Where property seized summarily under subsection (d) is not available for return, an acquitted defendant or established owner is entitled to no compensation where there was probable cause for the action taken.

In safeguarding property seized pending trial, an inspector or protector is authorized in his discretion, subject to orders of his administrative superiors, to make his own provisions for storage or safekeeping or to deposit the property with the sheriff of the county in which the trial is to be held for custody pending trial. In the event the mode of safekeeping reasonably selected by the inspector or protector entails a storage or handling charge, such charge is to be paid as follows:

- (1) By the defendant if he is convicted but the court nevertheless orders the return of the property to the defendant;
- (2) From the proceeds of the sale of the property if the property is sold under court order or in accordance with the provisions of this section; or
- (3) By the Department or by the Wildlife Resources Commission, as the case may be, if no other provision for payment exists.

(f) Subject to orders of his administrative superiors, an inspector or protector in his discretion may leave property which he is authorized to seize in the possession of the defendant with the understanding that such property will be subject to the orders of the court upon disposition of the case. Willful failure or inexcusable neglect of the defendant to keep such property subject to the orders of the court is a misdemeanor punishable in the discretion of the court. In exercising his discretion, the inspector or protector should not permit property to be retained by the defendant if there is any substantial risk of its being used by the defendant in further unlawful activity.

(g) Where a prosecution involving seized saleable fish is pending and such fish are perishable or seasonal, the inspector or protector may apply to the

court in which the trial is pending for an order permitting sale prior to trial. As used in this subsection, seasonal fish are those which command a higher price at one season than at another so that economic loss may occur if there is a delay in the time of sale. When ordered by the court, such sale prior to trial must be conducted in accordance with the order of the court or in accordance with the provisions of this section. The net proceeds of such sale are to be deposited with the court and are subject to the same disposition as would have been applicable to other types of property seized. Where sale is not lawful or otherwise not practicable or where prosecution is not pending, disposal of the fish is in accordance with subsection (d).

(h) Pending trial, the defendant or the established owner of any nonperishable and nonconsumable property seized may apply to the court designated to try the offense for return of the property. The property must be returned pending trial if:

- (1) The court is satisfied that return of the property will not facilitate further violations of the law; and
- (2) The claimant posts a bond for return of the property at trial in an amount double the value of the property as assessed by the court.

(i) Upon conviction of any defendant for a violation of the laws or regulations administered by the Department or the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may order the confiscation of all weapons, equipment, vessels, conveyances, fish, wildlife, and other evidence, fruits, and instrumentalities of the offense in question, whether or not seized or made subject to the orders of the court pending trial. If the confiscated property is lawfully saleable, it must be sold; otherwise it must be disposed of in a manner authorized in this section. Unless otherwise specified in the order of the court, sales are to be held by the Department or the Wildlife Resources Commission, as the case may be.

The Department and the Wildlife Resources Commission may administratively provide for an orderly public sale procedure of property which it may sell under this section. The procedure may include turning the property to be sold over to some other agency for sale, provided that the provisions of subsection (j) are complied with and there is proper accounting for the net proceeds of the sale. In the case of property that cannot lawfully be sold or is unlikely to sell for a sufficient amount to offset the costs of sale, the Department and the Wildlife Resources Commission may provide either for destruction of the property or legitimate utilization of the property by some public agency.

(j) Except as provided in subsection (d), if property is seized under subsection (c) or it appears that a person not a defendant has an interest in any property to be sold, destroyed, or otherwise disposed of, the Department and the Wildlife Resources Commission must provide for public notice of the description of the property and the circumstances of its seizure for a sufficient period prior to the time set for sale or other disposition to allow innocent owners or lienholders to assert their claims. The validity of claims are to be determined by the trial court in the event there is or has been a prosecution in connection with the seizure of the property. If there has been no prosecution and none is pending, the validity of claims must be determined by the Secretary or by the Executive Director, as the case may be. When there has been a sale under subsection (g), the provisions of this subsection apply to the net proceeds of the sale.

(k) Except as provided in subsection (j) and in subdivision (3) of the first paragraph of subsection (e), the net proceeds of all sales made pursuant to this section must be deposited in the school fund of the county in which the property was seized. (1915, c. 84, s. 6; 1917, c. 290, s. 2; C.S., s. 1885; 1935, c. 118; 1953, c. 1134; 1957, c. 1423, s. 2; 1961, c. 1189, s. 4; 1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1979, c. 830, s. 1.)

Cross References. — As to issuance of warning tickets, see § 113-140.

§ 113-138. Enforcement jurisdiction of special officers.

The Marine Fisheries Commission and the Wildlife Resources Commission by regulation may confer law-enforcement powers over matters within their jurisdiction upon the employees of any local, State, or federal public agency who possess special law-enforcement jurisdiction that would not otherwise extend to the subject matter of this Subchapter. The Department of Natural Resources and Community Development and Wildlife Resources Commission may confer such powers or not to any particular officers or class of officers as may be convenient or desirable in the interests of conservation of marine and estuarine and wildlife resources. Such conferring of powers does not constitute the appointment of any such special enforcement officer to an additional office and no oath need be taken. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4.)

§ 113-139: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-140. Warning tickets.

(a) In enforcing the laws and regulations within their subject matter jurisdiction, wildlife protectors may, in accordance with the criteria of this section, issue warning tickets to offenders instead of initiating criminal prosecutions.

(b) To secure uniformity of enforcement, the Executive Director may administratively promulgate standards consistent with subsection (c) providing that warning tickets may or may not be issued with respect to particular offenses, classes of offenses, or ways of committing offenses.

(c) A protector may issue a warning ticket only if all of the following conditions are met:

- (1) The protector is convinced that the offense was not intentional.
- (2) The offense is not of a kind or committed in a manner as to which warning tickets have been prohibited by the Executive Director.
- (3) The conduct of the offender was not calculated to result in any significant destruction of wildlife or fisheries resources.

(4) The conduct of the offender did not constitute a hazard to the public. A warning ticket may not be issued if the offender has previously been charged with or issued a warning ticket for a similar offense.

(d) If any law-enforcement officer with jurisdiction over the offense or if any employee of the Wildlife Resources Commission learns that under the criteria of this section a warning ticket was inappropriately issued to an offender, he must take action to secure initiation of prosecution for the appropriate charge or charges unless barred by the statute of limitations or unless prosecution is not otherwise feasible because of unavailability of evidence or necessary witnesses.

(e) Before any warning tickets are issued, the Executive Director must institute a procedure to ensure an accurate accounting for and recording of all warning tickets issued. This procedure may include use of prenumbered tickets and immediate notation of issuance of the warning ticket on each appropriate license or permit issued by the Wildlife Resources Commission held by the offender. The Executive Director may also provide for issuance of new, replacement, or renewal licenses and permits bearing the notation. The licenses covered by this subsection include certificates of number for motorboats.

(f) This section does not entitle any person who has committed an offense with the right to be issued a warning ticket. That issuance of a warning ticket may be appropriate under the criteria of this section does not restrict in any manner the powers of a wildlife protector or any other law-enforcement officer under G.S. 113-136, 113-137, and other provisions of law in dealing with hunters, fishermen, operators of vessels, and other offenders and suspected offenders.

(g) Issuance of a warning ticket does not constitute evidence of the commission of an offense, but may be used to prevent issuance of a subsequent warning ticket to the same person for a similar offense. (1981, c. 252, s. 1.)

Editor's Note. — Section 2 of Session Laws 1981, c. 252 makes this section effective July 1, 1981.

§§ 113-141 to 113-150: Reserved for future codification purposes.

ARTICLE 14.

Commercial and Sports Fisheries Licenses and Taxes.

§ 113-151. Regulations of Marine Fisheries Commission.

Legal Periodicals. — For a note on the state's interest in wild animals, see 2 Campbell L. Rev. 151 (1980).

§ 113-152. Licensing of vessels; fees.

Legal Periodicals. — For a note on the state's interest in wild animals, see 2 Campbell L. Rev. 151 (1980).

§ 113-155.1. Commercial fisherman; identification.

The receipt of a current and valid commercial fishing license issued by the Department shall serve as proper identification of the licensee as a commercial fisherman. (1973, c. 708, s. 2; 1977, c. 771, s. 4; 1979, c. 388, s. 2.)

Effect of Amendments. — The 1979 amendment, effective April 18, 1979, rewrote this section.

§ 113-161. Nonresidents reciprocal agreements.

Persons who are not residents of North Carolina are not entitled to obtain licenses under the provisions of G.S. 113-152 except as hereinafter provided. Residents of jurisdictions which sell commercial fishing licenses to North Carolina residents are entitled to North Carolina commercial fishing licenses under the provisions of G.S. 113-152. Such licenses may be restricted in terms of area, gear and fishery by the commission so that the nonresidents are licensed to engage in North Carolina fisheries on the same or similar terms that North Carolina residents can be licensed to engage in the fisheries of such other jurisdiction. The secretary may enter into such reciprocal agreements with other jurisdictions as are necessary to allow nonresidents to obtain commercial fishing licenses in North Carolina subject to the foregoing provisions. (1965, c. 957, s. 2; 1973, c. 1262, ss. 28, 86; 1977, 2nd Sess., c. 1183.)

Effect of Amendments. — The 1977, 2nd Sess., amendment, effective June 16, 1978, rewrote this section.

§ 113-162. Fraud or deception as to licenses, taxes or records.

(a) It is unlawful to falsify, or to practice any fraud or deception designed to evade the provisions of this Article or of regulations made under the authority of this Article in connection with:

- (1) Any licenses authorized in this Article;
- (2) Any tax receipts or other evidence that the tax has been assessed on seafood or that the seafood is not subject to tax; or
- (3) Any records required to be kept under the provisions of this Article or of regulations made under the authority of this Article.

(b) A violation of this section is punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). (1965, c. 957, s. 2; 1979, c. 388, s. 3.)

Effect of Amendments. — The 1979 amendment, effective April 18, 1979, designated the former section as subsection (a) and added subsection (b).

§ 113-163. Record-keeping requirements.

(c) The following records collected and compiled by the Department shall not be considered public records within the meaning of Chapter 132 of the General Statutes, but shall be confidential and shall be used only for the equitable and efficient administration and enforcement of this Article or for determining conservation policy, and shall not be disclosed except when required by the order of a court of competent jurisdiction: all records, accounts and reports

which licensees are required by the Department to make, keep and exhibit pursuant to the provisions of this section, and all records, accounts and memoranda compiled by the Department from records, accounts and reports of licensees and from investigations and inspections, containing data and information concerning the business and operations of licensees reflecting their assets, liabilities, inventories, revenues and profits; the number, capacity, capability and type of fishing vessels owned and operated; the type and quantity of fishing gear used; the catch of fish or other seafood by species in numbers, size, weight, quality and value; the areas in which fishing was engaged in; the location of catch; the time of fishing, number of hauls, and the disposition of the fish and other seafood. The Department may compile statistical information in any aggregate or summary form which does not directly or indirectly disclose the identity of any licensee-source of the information, and any compilation of such statistical information by the Department shall be a public record open to inspection and examination by any person, and may be disseminated to the public by the Department. (1953, c. 1134; 1961, c. 1189, s. 3; 1965, c. 957, s. 2; 1973, c. 1262, s. 28; 1979, c. 388, s. 4.)

Effect of Amendments. — The 1979 amendment, effective April 18, 1979, added subsection (c).

Only Part of Section Set Out. — As subsections (a) and (b) were not changed by the amendment, they are not set out.

ARTICLE 15.

Regulation of Coastal Fisheries.

§ 113-187. Penalties for violations of Article and regulations.

(d) Any person in charge of a commercial fishing operation conducted in violation of the following provisions of this Subchapter or the following rules and regulations of the Department of Natural Resources and Community Development; and any person in charge of any vessel used in violation of the following provisions of the Subchapter or the following rules and regulations, shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred fifty dollars (\$250.00) for the first offense and not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for any offense thereafter, or imprisonment for not more than 30 days, or both. The violations of the statute or the rules and regulations for which this penalty is mandatory are:

- (1) Taking or attempting to take, possess, sell, or offer for sale any oysters or clams taken from areas closed by statute, regulation, or proclamation because of suspected pollution.
- (2) Taking or attempting to take or have in possession aboard a vessel, shrimp taken by the use of a trawl net between January 1 and the date upon which the shrimping season shall be opened by the Secretary.
- (3) Using a trawl net in any coastal fishing waters closed by proclamation or regulation for the protection of the shrimp population or juveniles of any other species of major economic importance.
- (4) Violating the provisions of a special permit issued by the Department.
- (5) Using or attempting to use any trawl net or dredge in designated primary nursery areas. (1965, c. 957, s. 2; 1973, c. 1102; c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1979, c. 388, s. 5.)

Effect of Amendments. — The 1979 amendment, effective April 18, 1979, added "or juveniles of any other species of major economic importance" at the end of subdivision (3) of subsection (d), and added subdivision (5) to subsection (d).

Only Part of Section Set Out. — As only subsection (d) was changed by the amendment, the other subsections are not set out.

§ 113-189. Protection of sea turtles and porpoises.

(a) It is unlawful to willfully take, disturb or destroy any sea turtles including green, hawksbill, loggerhead, and leatherback turtles, or their nests or eggs.

(b) It shall be unlawful willfully to harm or destroy porpoises. (1967, cc. 198, 1225; 1981, c. 873.)

Effect of Amendments. — The 1981 amendment, in subsection (a), substituted "is" for "shall be" preceding "unlawful," inserted "to" preceding "willfully" and deleted "to" following "willfully," deleted "but not limited to" follow-

ing "including" and deleted "at any time during the months of May, June, July, August and September of each year" at the end of the subsection.

ARTICLE 16.

Cultivation of Oysters and Clams.

§ 113-202. New leases and renewal leases of oyster and clam bottoms; termination of leases issued prior to January 1, 1966.

CASE NOTES

Requested Fee Increase after First Renewal Term Permissible. — Where plaintiff and State, parties to a lease of oyster bottoms, did not intend to create a perpetual lease, a third renewal of the lease was within the discretion of the State, and a requested increase in the rental fee, pursuant to this sec-

tion, after the first renewal term had ended, was constitutionally permissible and did not impair the State's obligation of its lease contract with plaintiff. *Oglesby v. McCoy*, 41 N.C. App. 735, 255 S.E.2d 773, cert. denied, 298 N.C. 299, 259 S.E.2d 301 (1979).

§ 113-205. Registration of grants in navigable waters; exercise of private fishery rights.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

§ 113-208. Protection of oyster and clam leases.

(a) Any person, other than the lessee, who takes or attempts to take oysters or clams from any privately leased or owned oyster or clam bottom area without written authorization of the lessee is guilty of a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00), imprisonment for not more than 30 days, or both. The written authorization shall include the lease number, name and

address of authorized person, date of issuance, and date of expiration, and it must be signed by the lessee.

(b) The prosecutor shall dismiss any case brought for a violation of this section if the defendant produces a notarized written authorization in conformance with subsection (a) which states that the defendant had permission to take oysters or clams from the leased area at the time of the alleged violation; except the prosecutor may refuse to dismiss the case if he has reason to believe that the written authorization is fraudulent. (1979, c. 537.)

Editor's Note. — This section is effective May 9, 1979.

ARTICLE 17.

Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as

§ 113-221. Filing, codification and publication of regulations; effective date of regulations; proclamations suspending or implementing regulations; presumption of publication; judicial notice of codifications; Secretary's certificates as evidence.

(e) The Marine Fisheries Commission may delegate to the Secretary the authority to issue proclamations suspending or implementing, in whole or in part, particular regulations of the Commission which may be affected by variable conditions. Such proclamations are to be issued by the Secretary or by a person designated by the Secretary. All proclamations must state the hour and date upon which they become effective and must be issued at least 48 hours in advance of the effective date and time. In those situations in which the proclamation prohibits the taking of certain fisheries resources for reasons of public health, the proclamation can be made effective immediately upon issuance. Persons violating any proclamation which is made effective immediately shall not be charged with a criminal offense during the time between the issuance and 48 hours after such issuance unless such person had actual notice of the issuance of such proclamation. Fisheries resources taken or possessed by any person in violation of any proclamation may be seized regardless of whether such person had actual notice of the proclamation. A permanent file of the text of all proclamations shall be maintained in the office of the Secretary or the person designated by the Secretary to issue proclamations. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding. Article 2 and Article 5 of Chapter 150A of the General Statutes are not applicable to proclamations issued in accordance with this section and proclamations need not be filed with any clerks of superior court.

The Department must make every reasonable effort to give actual notice of the terms of any proclamation to the persons who may be affected thereby. Such effort includes press releases to communications media, posting of notices at docks and other places where persons affected may gather, personal communication by inspectors and other agents of the Department, and such other measures designed to reach the persons who may be affected.

(1979, c. 388, s. 6.)

Effect of Amendments. — The 1979 amendment, effective April 18, 1979, substituted "to issue proclamations suspending or implementing" for "by proclamations to suspend or implement" and deleted "Marine Fisheries" before "commission" near the middle of the first sentence of subsection (e), added "or by a person

designated by the Secretary" to the end of the second sentence of subsection (e), and added the fourth through ninth sentences to subsection (e).

Only Part of Section Set Out. — As only subsection (e) was changed by the amendment, the other subsections are not set out.

§ 113-229. Permits to dredge or fill in or about estuarine waters or state-owned lakes.

(e) Applications for permits except special emergency permit applications shall be circulated by the Department of Natural Resources and Community Development among all State agencies and, in the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project so that such agencies will have an opportunity to raise any objections they might have. The Department may deny an application for a dredge or fill permit upon finding: (1) that there will be significant adverse effect of the proposed dredging and filling on the use of the water by the public; or (2) that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners; or (3) that there will be significant adverse effect on public health, safety, and welfare; or (4) that there will be significant adverse effect on the conservation of public and private water supplies; or (5) that there will be significant adverse effect on wildlife or fresh water, estuarine or marine fisheries. In the absence of such findings, a permit shall be granted. Such permit may be conditioned upon the applicant amending his proposal to take whatever measures are reasonably necessary to protect the public interest with respect to the factors enumerated in this subsection. Permits may allow for projects granted a permit the right to maintain such project for a period of up to 10 years. The right to maintain such project shall be granted subject to such conditions as may be reasonably necessary to protect the public interest. The Coastal Resources Commission shall have the authority to adopt, modify and revoke official regulations interpreting and applying the provisions of this section and rules of procedure consolidating the permit required by G.S. 113A-118 (the Coastal Area Management Act) so as to eliminate all unnecessary duplication and create a single, expedited permit process. Maintenance work as defined in this subsection shall be limited to such activities as are required to maintain the project dimensions as found in the permit granted. The Department shall act upon an application for permit within 90 days after the application is filed except for applications for a special emergency permit in which case the Department shall act within two working days after an application is filed, and failure to so act shall automatically approve the application.

(e1) The Secretary of the Department of Natural Resources and Community Development is empowered to issue special emergency dredge or fill permits upon application. Emergency permits may be issued only when life or structural property is in imminent danger as a result of rapid recent erosion or sudden failure of a man-made structure. The Coastal Resources Commission may, after public hearings, elaborate by rule upon what conditions the Secre-

tary may issue a special emergency dredge or fill permit. The Secretary may condition the emergency permit upon any reasonable conditions, consistent with the emergency situation, he feels are necessary to reasonably protect the public interest. Where an application for a special emergency permit includes work beyond which the Secretary, in his discretion, feels necessary to reduce imminent dangers to life or property he shall issue the emergency permit only for that part of the proposed work necessary to reasonably reduce the imminent danger. All further work must be applied for by application for an ordinary dredge or fill permit. The Secretary shall deny an application for a special dredge or fill permit upon a finding that the detriment to the public which would occur on issuance of the permit measured by the five factors in G.S. 113-229(e) clearly outweighs the detriment to the applicant if such permit application should be denied.

(f) If any State agency or the applicant raises an objection to the action of the Department of Natural Resources and Community Development regarding the permit application within 20 days after said action was taken, the Department shall refer the matter to the Coastal Resources Commission. The Coastal Resources Commission shall hear the matter at its next regularly scheduled meeting, but in no case more than 90 days from the date of the departmental action. At said hearing, evidence shall be taken by the review commission from all interested persons, who shall have a right to be represented by counsel. After hearing the evidence, the review commission shall make findings of fact in writing and shall affirm, modify or overrule the action of the Department concerning the permit application. Any State agency or the applicant may appeal from the ruling of the review commission to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Chapter 150A of the General Statutes.

(1979, c. 253, ss. 1, 2.)

Effect of Amendments. — The 1979 amendment, effective April 2, 1979, substituted "Coastal Resources Commission" for "Marine Fisheries Commission" throughout subsections (e), (e1) and (f); and substituted the present seventh sentence of subsection (e) for one which read "The Marine Fisheries Commission shall by rule, after at least two public hearings, enumerate such conditions as it deems necessary to carry out the purposes of this subsection."

Only Part of Section Set Out. — As only subsections (e), (e1) and (f) were changed by the amendment, the rest of the section is not set out.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

For a note on the State's interest in wild animals, see 2 Campbell L. Rev. 151 (1980).

CASE NOTES

Subdivision (e)(2) Not Unlawful Delegation of Legislative Power. — There are adequate statutory guidelines and procedural safeguards relating to the authority of the Department of Natural Resources and Community Development and the review commission to deny an application for a permit to dredge or fill in estuarine waters pursuant to subdivision (e)(2) of this section upon finding "that there will be significant adverse effect on the value and enjoyment of the property of riparian owners," so that subdivision (e)(2) does not constitute an unlawful delegation of legislative power in violation of N.C. Const., Art. I, § 6. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

And Is Constitutional Exercise of Police Power. — This statute, giving the Department of Natural Resources and Community Development the authority to deny an application for a dredge or fill permit in estuarine waters upon finding "that there will be significant adverse effect on the value and enjoyment of the property of any riparian owners," does not allow the State to favor private interests over public interests, and is a constitutional exercise of the police power since the denial of a permit where either the water or adjacent private property will be adversely affected is a matter of public interest and is therefore a proper subject for regulatory legislation, the permit application system created by this sec-

tion is the most feasible and reasonable manner to control dredging and filling activities, and the restriction placed on a landowner is reasonable because it relates only to what the owner may do in the state's estuarine waters and does not interfere with the owner's right to use his own property. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

The purpose of this section is to serve the overall purpose of the public interest in the preservation of the natural resources and to protect the rights of owners of riparian property that may be affected by such project. In re Milliken, 43 N.C. App. 382, 258 S.E.2d 856 (1979).

The purpose of this statute is to conserve our estuarine resources. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

Permit Applications Reviewed Prospectively. — The statutory purpose can only be effected by reviewing a project prior to its completion. A request by the department of the applicant to file an "after-the-fact" application for a permit defies the logic and purpose of the statute. Permit applications must be reviewed prospectively, taking into consideration the work already completed. In re Milliken, 43 N.C. App. 382, 258 S.E.2d 856 (1979).

Private Interests Not Favored over Public. — The Court of Appeals cannot accept a construction of this statute that allows the State to favor private interests over public interests. In re Gales Creek Community Ass'n, 44 N.C. App. 554, 261 S.E.2d 510 (1980).

The Marine Fisheries Commission acted arbitrarily and capriciously in denying a permit to dredge or fill in estuarine waters for the purpose of constructing a public boat ramp where all of the evidence developed in the case related exclusively to the effect that the use of the ramp and its approaches by the public would have on the idiosyncratic sensitivities of four individuals, in that the influx of people with boats, and the possible littering and noise, would adversely affect their enjoyment of their property, and there is no evidence that the use of the ramp and its approaches, or the operation of boats on the waters, would have any adverse effect on the environment of the estuarine resources of the riparian owners' land. In re Gales Creek Community Ass'n, 44 N.C. App. 554, 261 S.E.2d 510 (1980).

Denial of permits under subdivision (e)(2) is proper only when there is evidence that the adjacent riparian landowners have been adversely affected in their enjoyment of those resources and not when the adverse effect relates solely to the enjoyment and value of

their own property. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

The restriction of subdivision (e)(2) of this section is not a restriction regarding what a landowner may do with his own land but is concerned with what a landowner adjacent to estuarine resources may do as far as dredging and filling in those waters when an adjacent landowner will be adversely affected in the enjoyment and value of his land. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

In determining whether to deny an application for a dredge and fill permit in estuarine waters on the ground that there would be a significant adverse effect on the value and enjoyment of the property of riparian owners, the review commission was not limited to a consideration only of the effects of the dredging and filling itself on adjacent landowners but could properly consider the effects of a boat ramp which was the ultimate purpose of the dredge and fill work. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

In determining whether to deny an application for a dredge and fill permit in estuarine waters on the ground that there would be a significant adverse effect on the value and enjoyment of the property of riparian owners, even if the review commission exceeded its statutory authority in considering the effects of a boat ramp which was the ultimate purpose of the dredge and fill work, the commission's denial of a dredge and fill permit would still be upheld where the application stated that the fill from the dredging operation would be placed on the roadbed leading to the boat ramp site; the riparian owners presented evidence that the roadbed has already suffered erosion, that erosion will continue unless adequate drainage measures which the applicant did not propose are taken, and that the erosion will affect the access area and the property of the riparian owners, since the adjacent owners' property will be adversely affected by the dredging and filling itself because of the further erosion that will occur. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

Burden of Proof Before Review Commission. — Placing the burden of proof at the hearing before the review commission on the party who lost before the Department of Natural Resources and Community Development is simply a proper recognition that it is presumed that the department will act in accordance with the law and the facts and the losing party should have the burden of showing that the department erred. In re Gales Creek Community Ass'n, 300 N.C. 267, 266 S.E.2d 645 (1980).

§ 113-230. Orders to control activities in coastal wetlands.

(a) The Secretary of Natural Resources and Community Development, with the approval of the Coastal Resources Commission, may from time to time, for the purpose of promoting the public safety, health, and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify, or repeal orders regulating, restricting, or prohibiting dredging, filling, removing or otherwise altering coastal wetlands. In this section, the term "coastal wetlands" shall mean any marsh as defined in G.S. 113-229(n)(3), as amended, and such contiguous land as the Secretary reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

(g) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Coastal Resources Commission, shall take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this section.

(1979, c. 253, s. 4.)

Effect of Amendments. — The 1979 amendment, effective April 2, 1979, substituted "Coastal Resources Commission" for "Marine Fisheries Commission" near the beginning of the first sentence of subsection (a) and near the middle of subsection (g).

Only Part of Section Set Out. — As only

subsections (a) and (g) were changed by the amendment, the rest of the section is not set out.

Legal Periodicals. — For article, "Public Rights and Coastal Zone Management," see 51 N.C.L. Rev. 1 (1972).

ARTICLE 20.***Miscellaneous Regulatory Provisions.*****§ 113-261. Taking fish and wildlife for scientific purposes; permits to take in normally unauthorized manner; cultural and scientific operations.**

(a) The Department, the Wildlife Resources Commission, and agencies of the United States with jurisdiction over fish and wildlife are hereby granted the right to take marine, estuarine, and wildlife resources within the State, to conduct fish cultural operations and scientific investigations in the several waters of North Carolina, to survey fish and wildlife populations in the State, to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife, to propagate animals, birds, and fish, and to erect fish hatcheries and fish propagating plants without regard to any licensing or permit requirements of this Subchapter.

(b) The Department with respect to fish in coastal fishing waters and the Wildlife Resources Commission with respect to wildlife may provide for the issuance of permits, on such terms as they deem just and in the best interest of conservation, authorizing persons to take such fish or wildlife through the use of drugs, poisons, explosives, electricity, or any other generally prohibited manner. Such permits need not be restricted solely to victims of depredations or to scientific or educational institutions, but should be issued only for good cause. No permit to take wildlife other than fish by means of poison may be issued, however, unless the provisions of Article 22A are met.

(c) The Department, the Wildlife Resources Commission, and agencies of the United States with jurisdiction over fish and wildlife may, as necessary in their legitimate operations, take fish and wildlife in a manner generally prohibited

by this Subchapter or by regulations made under the authority of this Subchapter. (1915, c. 84, s. 7; C. S., s. 1886; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective

Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-262. Taking fish or wildlife by poisons, drugs, explosives or electricity prohibited; exceptions; possession of illegally killed fish or wildlife prohibited.

(a) Except as otherwise provided in this Subchapter, or in regulations permitting use of electricity to take certain fish, it is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both to take any fish or wildlife through the use of poisons, drugs, explosives, or electricity. This subsection does not apply to any person lawfully using any poison or pesticide under the Structural Pest Control Act of North Carolina of 1955, as amended, or the North Carolina Pesticide Law of 1971, as amended.

(b) Except under a valid permit it is unlawful to possess any fish or wildlife:

(1) Bearing evidence of having been taken in violation of subsection (a);
or

(2) With knowledge or reason to believe that the fish or wildlife was taken in violation of subsection (a). (1883, c. 290; Code, s. 1094; Rev., s. 3417; C.S., ss. 1968, 2124; 1927, c. 107; 1935, c. 486, ss. 18-20; 1939, c. 235, s. 1; 1949, c. 1205, ss. 2, 3; 1953, c. 1134; 1955, c. 104; c. 1053, ss. 1, 3, 4; 1957, c. 1056; 1959, c. 207; c. 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1965, c. 904, s. 1; c. 957, s. 2; 1967, c. 728, s. 1; c. 858, s. 1; c. 1149, s. 1.5; 1969, c. 75; c. 140; 1971, c. 439, ss. 1-3; c. 449, s. 1; c. 461; c. 648, s. 1; c. 899, s. 1; 1973, c. 1096; c. 1210, ss. 1-3, 5; c. 1262, s. 18; 1975, c. 669; c. 728; 1977, c. 493; c. 794, s. 4; 1979, c. 830, s. 1.)

§ 113-263. Inspecting plans and specifications of dams.

The Department and the Wildlife Resources Commission, in addition to other agencies primarily responsible, may inspect the plans and specifications of all dams proposed to be built, in North Carolina or elsewhere within the United States, the design or proposed mode of construction of which may have an adverse effect upon fish within the State. The Department or the Wildlife Resources Commission, as the case may be, may be heard before the appropriate agency charged with approving said plans and specifications, and due consideration shall be given to said Department or Wildlife Resources Commission in the approval or disapproval of the plans and specifications of proposed dams by the agencies so charged with said duty. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-264. Regulatory power over property of agency; public hunting grounds.

(a) The Department and the Wildlife Resources Commission are granted the power by regulation to license, regulate, prohibit, or restrict the public as to use and enjoyment of, or harm to, any property of the Department or the Wildlife Resources Commission, and may charge the public reasonable fees for access to or use of such property. "Property" as the word is used in this section is intended to be broadly interpreted and includes lands, buildings, vessels, vehicles, equipment, markers, stakes, buoys, posted signs and other notices, trees and shrubs and artificial constructions in boating and fishing access areas, game lands, wildlife refuges, public waters, public mountain trout waters, and all other real and personal property owned, leased, controlled, or cooperatively managed by either the Department or the Wildlife Resources Commission.

(b) Willful removal of, damage to, or destruction of any property of the Department or the Wildlife Resources Commission is a misdemeanor punishable in the discretion of the court.

(c) The Wildlife Resources Commission may cooperate with private landowners in the establishment of public hunting grounds. It may provide for the posting of these areas and of restricted zones within them, require that authorized hunters obtain written permission from the owner to hunt, enforce general laws concerning trespass by hunters and concerning damage or injurious activities by hunters and by others carrying weapons on or discharging weapons across public hunting grounds or restricted zones. (1965, c. 957, s. 2; 1973, c. 1262, ss. 18, 28; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

§ 113-265. Obstructing or polluting flow of water into hatchery; throwing fish offal into waters; robbing or injuring nets, seines, buoys, etc.

(a) No person may obstruct, pollute, or diminish the natural flow of water into or through any fish hatchery in violation of the requirements of the Environmental Management Commission.

(b) It is unlawful for any person to throw or cause to be thrown into the channel of any navigable waters fish offal in any quantity likely to hinder or prevent the passage of fish along such channel. The Marine Fisheries Commission and the Wildlife Resources Commission may by regulation impose further restrictions upon the throwing of fish offal in any coastal fishing waters or inland fishing waters respectively.

(c) It is unlawful for any person without the authority of the owner of the equipment to take any fish from nets, traps, and other devices to catch fish which have been placed in the open waters of the State. Violation of this subsection is a misdemeanor punishable in the discretion of the court.

(d) Any master or other person having the management or control of a vessel in the navigable waters of the State who willfully, wantonly, and unnecessarily does injury to any seine or net which may lawfully be hauled, set, or fixed in such waters for the purpose of taking fish is guilty of a misdemeanor punishable in the discretion of the court.

(e) Any person who willfully destroys or injures any buoys, markers, stakes, nets, or other devices or property lawfully set out in the open waters of the State in connection with any fishing or fishery is guilty of a misdemeanor punishable in the discretion of the court. (1883, c. 137, s. 5; Code, ss. 3385, 3386, 3389, 3407, 3418; Rev., ss. 2444, 2465, 2478; C. S., ss. 1969, 1971, 1972; 1959, c. 405; 1965, c. 957, s. 2; 1971, c. 690, s. 4; 1973, c. 1262, ss. 18, 28.)

§ **113-266:** Reserved for future codification purposes.

§ **113-267. Replacement costs of marine, estuarine, and wildlife resources; regulations authorized; prima facie evidence.**

To provide information to the courts and other officials taking action under G.S. 15A-1343(b)(16b), under G.S. 143-215.3(a)(7), or under any other pertinent authority of law, the Marine Fisheries Commission and the Wildlife Resources Commission are authorized to adopt regulations setting forth the factors that should be considered in determining the replacement costs of fish and wildlife and other marine, estuarine, and wildlife resources that have been taken, injured, removed, harmfully altered, damaged, or destroyed. The Marine Fisheries Commission and the Wildlife Resources Commission may make similar regulations respecting costs of investigations required by G.S. 143-215.3(a)(7) or which are made pursuant to a court order. For common offenses resulting in the destruction of marine, estuarine, and wildlife resources the Marine Fisheries Commission and the Wildlife Resources Commission may adopt schedules of costs which reasonably state the likely replacement costs and necessary investigative costs when appropriate. Regulations of the Marine Fisheries Commission and the Wildlife Resources Commission stating scheduled costs or cost factors must be treated as prima facie evidence of the actual costs, but do not prevent a court or jury from examining the reasonableness of the regulations or from assessing the special factors in a case which may make the true costs either higher or lower than the amount stated in the regulations. The term "replacement costs" must be broadly construed to include indirect costs of replacement through habitat improvement or restoration, establishment of sanctuaries, and other recognized conservation techniques when direct stocking or replacement is not feasible. (1979, c. 830, s. 1.)

§§ **113-268 to 113-270:** Reserved for future codification purposes.

ARTICLE 21.

Licenses and Permits Issued by the Wildlife Resources Commission.

§ **113-270.1. License agents.**

(a) The Wildlife Resources Commission may by regulation provide for the annual appointment of persons as license agents to sell licenses which it is authorized to issue by this Subchapter or by any other provisions of law. To facilitate the convenience of the public, the efficiency of administration, the need to keep statistics and records affecting the conservation of wildlife resources, boating, water safety, and other matters within the jurisdiction of the Wildlife Resources Commission, and the need to issue licenses containing special restrictions, the Wildlife Resources Commission may issue licenses in any particular category through:

- (1) License agents.
- (2) The Wildlife Resources Commission's headquarters.
- (3) Employees of the Wildlife Resources Commission.
- (4) Two or more such sources simultaneously.

When there are substantial reasons for differing treatment, the Wildlife Resources Commission may issue a type of license by one method in one locality and by another method in another locality.

(b) License agents may deduct from the amount collected for each license a fee of:

- (1) Twenty-five cents (25¢) for selling licenses that cost less than five dollars (\$5.00).
- (2) Fifty cents (50¢) for selling licenses that cost five dollars (\$5.00) or more but less than twenty-five dollars (\$25.00).
- (3) One dollar (\$1.00) for selling licenses that cost twenty-five dollars (\$25.00) or more.

(c) The Wildlife Resources Commission may provide qualifications and standards concerning license agents and delegate to the Executive Director the task of appointment and supervision. Annual appointments run from May 1 to April 30 each year. The Wildlife Resources Commission may require license agents to post bonds, keep records and make reports concerning licenses and receipts, be subject to such audits and inspections as may be necessary, pay penalties up to ten percent (10%) upon receipts as to which there is serious delay in remittance, and pay a penalty of five percent (5%) on any worthless checks given the Wildlife Resources Commission. The minimum penalty for a worthless check, however, is five dollars (\$5.00), and the maximum penalty is two hundred dollars (\$200.00).

(d) The Wildlife Resources Commission may make regulations in implementing the authority granted in subsection (c), but it need not set out in its regulations details as to forms of license, records and accounting procedures, and other reasonable requirements that may be administratively promulgated by employees of the Wildlife Resources Commission in implementation of the purposes of this Article in order for such administrative requirements to be deemed validly required. It is a misdemeanor punishable in the discretion of the court for a license agent:

- (1) To withhold or misappropriate funds from the sale of licenses;
- (2) To falsify records of licenses sold;
- (3) Wilfully and knowingly to assist or allow a person to obtain a license for which he is ineligible;
- (4) Wilfully to issue a backdated license;
- (5) Wilfully on records or licenses to include false information or omit material information as to:
 - a. A person's entitlement to a particular license; or
 - b. The applicability or term of a particular license; or
- (6) To refuse to return all consigned licenses, or to remit the net value of consigned licenses sold or unaccounted for, upon demand from an authorized employee of the Wildlife Resources Commission.

(e) The Executive Director may temporarily suspend, revoke, or refuse to renew a person's appointment as a license agent if he fails in a timely manner to submit required reports, remit moneys due the Wildlife Resources Commission, or otherwise comply with the qualifications and standards set by the Wildlife Resources Commission or with reasonable administrative directives of the Executive Director. The temporary suspension is effective immediately upon communication of that fact to the license agent or his representative handling the licenses. The communication as to suspension must state the grounds for suspension and that the license agent may request a hearing within five working days if he contests the grounds for suspension. If not in writing, the communication must be followed by written notice of suspension containing the same information. By personal service of an impoundment order upon a license agent or his representative handling the licenses, an employee or agent of the Wildlife Resources Commission may enter the premises and impound all licenses, moneys, record books, reports, license forms, and other

documents, ledgers, and materials pertinent or apparently pertinent to the license agency being suspended. The Executive Director must make the impounded property, or copies of it, available to the licensee during the period of temporary suspension.

(f) If a hearing is requested, it is before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. The temporary suspension remains in effect until the hearing, and after the hearing may be rescinded or continued in effect, as the facts warrant, in the discretion of the Executive Director. A temporary suspension may not last longer than 30 days, but additional suspensions may be imposed if at the end of the suspension period the license agent is still not in compliance with appropriate standards, qualifications, and administrative directives. A license agent may at any time after a hearing appeal his suspension to the Wildlife Resources Commission.

(g) Notice of revocation or nonrenewal of the appointment may be sent the license agent in lieu of or in addition to temporary suspension. The notice must state the grounds for termination of the appointment and the license agent's right to a hearing if he has not previously been afforded one. If the appointment is to be revoked, the notice must state the effective date and hour of revocation. If the appointment is not to be renewed, the notice must state that the appointment expires at midnight on April 30. If he has not been previously afforded a hearing, a license agent is entitled to a hearing within 14 days before the Executive Director or his designee to be held at Raleigh or some other place convenient to the parties specified by the Executive Director. After the hearing, the Executive Director, applying appropriate standards, must take the action with respect to the appointment as license agent that the facts warrant. If the Executive Director upholds the decision to terminate the appointment, a license agent may appeal his termination to the Wildlife Resources Commission. Pending the hearing and any appeal from it, the termination is held in abeyance, but no license sales may be made once the license agent's bond has expired.

(h) Upon termination of the appointment, the former agent must return to the Wildlife Resources Commission all record books, reports, license forms, moneys, and other property pertaining to the license agency, and must allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits required in terminating the license agency. Each day's refusal after termination to return, upon demand, the record books, reports, license forms, moneys, and other property pertaining to the license agency is a separate offense. Each instance of refusal, after termination, to allow agents of the Wildlife Resources Commission to conduct necessary inspections and audits during regular business hours is a separate offense. A violation of this subsection is a misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both. Before termination, violations by license agents are punishable under G.S. 113-135, subsection (d) above, or other provision of this Subchapter, as appropriate.

(i) No person denied appointment or whose appointment was terminated under this section is eligible to apply again for an appointment as a license agent for two years. Upon application, the executive director may not grant the appointment as license agent unless the applicant produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, regulations, and reasonable administrative directives pertaining to license agents.

(j) The Executive Director or his designee holding any hearing under this section must keep a written record of evidence considered and findings made. Upon appeal to the Wildlife Resources Commission, the commission chairman or other presiding officer must cause such a written record of evidence and findings to be made and kept. Hearings and appeals under this section are

internal matters concerning license agents of the Wildlife Resources Commission and are not governed by the North Carolina Administrative Procedure Act. (1961, c. 352, ss. 4, 9; 1979, c. 830, s. 1.)

Revision of Article. — With the exceptions listed below, this Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. Session Laws 1979, c. 830, is made effective generally July 1, 1980; provisions as to annual licenses that expire July 31 are effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979.

Included in this Article are the following sections and parts of sections amended or added by 1979 acts other than c. 830, with different effective dates:

§ 113-271, subsection (d), as amended by

Session Laws 1979, c. 748, s. 6, effective Aug. 1, 1979, and Jan. 1, 1980;

§ 113-271, subsection (e), as added by Session Laws 1979, c. 737, effective Jan. 1, 1980;

§ 113-272, subsection (d), as amended by Session Laws 1979, c. 748, s. 7, effective Jan. 1, 1980.

§ 113-272.1, as amended by Session Laws 1979, c. 748, s. 8, effective Jan. 1, 1980.

For a more detailed consideration of Session Laws 1979, c. 830, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Subchapter.

§ 113-270.2. Hunting licenses.

(a) Except as otherwise specifically provided by law, no one may take wild animals or wild birds without having first procured a current and valid hunting license.

(b) Except when indicated otherwise, all hunting licenses are annual licenses issued beginning August 1 each year running until the following July 31.

(c) The hunting licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident sportsman combination license — \$27.50. This license is valid only for use by an individual resident of the State.
- (1a) Lifetime sportsman combination licenses. — These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:
 - a. Type I available only to an individual under one year of age — \$100.00.
 - b. Type Y available only to an individual under 12 years of age — \$200.00.
 - c. Type A available to a resident individual of any age — \$300.00.
- (2) Resident combination hunting-fishing license — \$12.50. This license is valid only for use by an individual resident of the State.
- (3) Resident State hunting license — \$9.50. This license is valid only for use by an individual resident of the State.
- (3a) Lifetime resident State hunting license — \$150.00. This license is valid only for use by an individual resident of the State.
- (4) Resident county hunting license — \$4.50. This license is valid for use by an individual resident of the State within the county in which he resides.
- (5) Controlled shooting preserve hunting license — \$10.00. This license is valid only for use by an individual hunting in special controlled shooting preserves licensed in accordance with this Subchapter.
- (6) Nonresident sportsman combination license — \$55.00. This license is valid for use by an individual within the State.
- (7) Nonresident State hunting license — \$31.00. This license is valid for use by an individual within the State.

- (8) Nonresident six-day hunting license — \$25.00. This license is valid only for use on six consecutive hunting days by an individual within the State. Consecutive hunting days do not include Sundays except on military reservations where Sunday hunting is permitted.
- (9) Disabled veteran lifetime combination hunting-fishing license — \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (10) [Reserved.]
- (11) Age 70 lifetime combination hunting-fishing license — \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
- (12) Totally disabled resident combination hunting-fishing license — \$7.50. This license is valid only for use by an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled.
- (d) One dollar (\$1.00) of each nonresident State hunting license and nonresident six-day hunting license sold must be set aside by the Wildlife Resources Commission and contributed to a proper agency or agencies in the United States for expenditure in Canada for the propagation, management, and control of migratory waterfowl. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 384, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5, s. 13; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4, 6, 8; c. 673, s. 2; 1977, c. 658; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1178, s. 1; 1981, c. 482, s. 4.)

Cross References. — As to wildlife endowment fund, see § 143-250.1.

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses that expire on July 31 of each year take effect on Aug. 1, 1980.

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the license fees in subsections (1), (2), (3), (4), (6), (7) and (8) of subsection (c).

The 1981 amendment added subdivisions (1a) and (3a) to subsection (c).

CASE NOTES

Constitutionality. — Enforcement of North Carolina's fishing license requirement against non-Indian fishermen on the reservation of the Eastern Band of Cherokee Indians violates the federal preemption doctrine. *Eastern Band of*

Cherokee Indians v. North Carolina Wildlife Resources Comm'n, 588 F.2d 75 (4th Cir. 1978), cert. denied, 446 U.S. 960, 100 S. Ct. 2933, 64 L. Ed. 2d 818 (1980) (decided under former Article 7 of Subchapter III).

§ 113-270.2A. Voluntary contribution to hunters safety education program.

(a) A person applying for a hunting license may make a voluntary contribution of fifty cents (50¢) to the Wildlife Resources Commission for the purpose of funding a hunter safety education program.

(b) The Wildlife Resources Commission shall devise administrative procedure for the collection of all contributions donated pursuant to the provisions of this act and shall collect and use the contributions to fund and provide for a hunter safety education program. (1979, c. 764, ss. 1, 2.)

Editor's Note. —

This section was enacted by Session Laws 1979, c. 764, and was originally codified as § 113-99.1, because it became immediately effective. The Article in which the section was

originally codified was repealed effective July 1, 1980, and Aug. 1, 1980, by Session Laws 1979, c. 830, and this section has therefore been recodified in the corresponding currently effective Article.

§ 113-270.3. Special activity licenses; big game kill reports.

(a) In addition to any hunting, trapping, or fishing license that may be required, individuals engaging in specially regulated activities must have the appropriate special activity license prescribed in this section before engaging in the regulated activity. Special activity licenses are annual licenses issued beginning August 1 each year running until the following July 31.

(b) The special activity licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident big game hunting license — \$4.50. This license is valid only for use by an individual resident of the State and must be procured before taking any big game within the State.
- (2) Nonresident big game hunting license — \$18.50. This license is valid for use by an individual within the State and, unless the resident big game hunting license has been validly procured, must be procured before taking any big game within the State.
- (3) Primitive weapons hunting license — \$6.00. This license is valid for use by an individual within the State and must be procured before taking any wild animals or birds with a primitive weapon during any special season for hunting with primitive weapons established by the Wildlife Resources Commission. During the regular season, a primitive weapon may be used without any special license unless its use is prohibited. For the purposes of this section a "primitive weapon" includes a bow and arrow, muzzle-loading firearm, and any other primitive weapon specified in the regulations of the Wildlife Resources Commission.
- (4) Game land license — \$8.00. This license is valid for use by an individual within the State and must be procured before hunting or trapping on game lands or fishing in managed waters on game lands. Managed waters include public mountain trout waters and other public waters, or private ponds, lying wholly or partly on game lands and designated as managed waters by the Wildlife Resources Commission. Possession of this license does not exempt its holder from payment of any applicable special use fees that may be prescribed by the Wildlife Resources Commission under the authority of G.S. 113-264(a), such as fees for field trials on game lands.
- (5) Falconry license — \$10.00. This license is valid for use by an individual within the State and must be procured before:
 - a. Taking, importing, transporting, or possessing a raptor; or
 - b. Taking wildlife by means of falconry.

The Wildlife Resources Commission may issue classes of falconry licenses necessary to participate in the federal/State permit system, require necessary examinations before issuing licenses or permits to engage in various authorized activities related to possession and maintenance of raptors and the sport of falconry, and regulate licenses as required by governing federal law and regulations. To defray the costs of administering required examinations, the Wildlife Resources Commission may charge reasonable fees upon giving them. To meet minimum federal standards plus other State standards in the interests of conservation of wildlife resources, the Wildlife Resources Commission may impose all necessary controls, including those set out in

the sections pertaining to collection licenses and captivity licenses, and may issue permits and require reports, but no collection license or captivity license is needed in addition to the falconry license.

(c) Any individual who kills any species of big game must report the kill to the Wildlife Resources Commission. The commission may by regulation prescribe the method of making the report, prescribe its contents, and require positive identification of the carcass of the kill, by tagging or otherwise.

(d) Any individual who possesses a current and valid lifetime or resident or nonresident sportsman combination license may at lawful times and places engage in any specially regulated activity without any of the licenses required by subdivisions (1) through (4) of subsection (b). The Wildlife Resources Commission may administratively provide for the annual issuance of big game tags, or other identification for big game authorized by subsection (c), to holders of lifetime sportsman combination licenses.

(e) Any individual who possesses a current and valid resident or nonresident comprehensive daily fishing license may at lawful times and places fish in managed waters on game lands without the game land license required by subdivision (4) of subsection (b). (1969, c. 1042, s. 7; 1973, c. 1097, s. 1; 1975, c. 171; c. 197, ss. 5, 7; c. 673, s. 1; 1977, c. 746, s. 1; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1178, ss. 2, 5; 1981, c. 482, s. 7; c. 620, s. 1.)

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses which expire on July 31 of each year take effect on Aug. 1, 1980, except that falconry provisions take effect on July 1, 1979.

Effect of Amendments. — The 1977, 2nd Sess., amendment increased the license fees in subdivisions (1), (2) and (3) of subsection (b) and

added subsection (e). The amendments to subsection (b) are effective July 1, 1980, and subsection (e) is effective January 1, 1981.

The first 1981 amendment inserted "lifetime or" in subsection (d).

The second 1981 amendment, effective July 1, 1981, added the last sentence of subsection (d).

§ 113-270.4. Hunting guide license.

(a) No one may serve for hire as a hunting guide without having first procured a current and valid hunting guide license. This license is valid only for use by an individual resident of the State meeting the criteria set by the Wildlife Resources Commission for issuance of the license. Possession of the hunting guide license does not relieve the guide from meeting other applicable license requirements.

(b) The hunting guide license is an annual license issued upon payment of five dollars and twenty-five cents (\$5.25) beginning August 1 of each year running until the following July 31.

(c) The Wildlife Resources Commission may by regulation provide for the qualifications and duties of hunting guides. In implementing this section, the Wildlife Resources Commission may delegate to the Executive Director and his subordinates administrative responsibilities concerning the selection and supervision of hunting guides, except that provisions relating to revocation of hunting guide licenses must be substantially set out in the regulations of the Wildlife Resources Commission. (1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 834, s. 1; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; 1973, c. 1262, s. 18; 1975, c. 197, s. 1-4; 1977, c. 658; 1979, c. 830, s. 1.)

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that

specifically apply to licenses that expire on July 31 of each year take effect on Aug. 1, 1980.

§ 113-270.5. Trapping licenses.

(a) Except as otherwise specifically provided by law, no one may take fur-bearing animals by trapping, or by any other authorized special method that preserves the pelt from injury, without first having procured a current and valid trapping license. When the trapping license is required, it serves in lieu of a hunting license in the taking of fur-bearing animals. If fur-bearing animals are taken as game, at the times and by the hunting methods that may be authorized, hunting license requirements apply. All trapping licenses are annual licenses issued beginning August 1 each year running until the following July 31.

(b) The trapping licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident State trapping license — \$10.00. This license is valid only for use by an individual resident of the State.
- (2) Resident county trapping license — \$5.00. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (3) Nonresident State trapping license — \$60.00. This license is valid for use by an individual within the State. (1929, c. 278, s. 3; 1969, c. 1042, s. 6; 1973, c. 1262, s. 18; 1975, c. 197, ss. 9-11; 1979, c. 830, s. 1.)

Editor's Note. — Under Session Laws 1979, c. 830, s. 17, provisions of this Subchapter that specifically apply to licenses that expire on July 31 of each year take effect on Aug. 1, 1980.

§ 113-271. Hook-and-line licenses in inland fishing waters.

(a) Except as otherwise provided in this Article, no one may fish by means of hook and line in inland fishing waters without having first procured a current and valid hook-and-line fishing license.

(b) Except when indicated otherwise, all hook-and-line fishing licenses are annual licenses. Annual fishing licenses, except for the sportsman combination licenses and the resident combination hunting-fishing license, are issued beginning January 1 each year running until the following December 31.

(c) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(d) The hook-and-line fishing licenses issued by the Wildlife Resources Commission are as follows:

- (1) Repealed by Session Laws 1979, c. 830, s. 1, effective August 1, 1980.

- (1a) Resident sportsman combination license — \$27.50. This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.

- (1b) Resident comprehensive daily fishing license — \$4.00. This license is valid only for use during the day indicated by an individual resident of the State.

- (1c) Lifetime sportsman combination licenses. — These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:

- a. Type I available only to an individual under one year of age — \$100.00.

- b. Type Y available only to an individual under 12 years of age — \$200.00.

- c. Type A available to a resident individual of any age — \$300.00.

- (2) Resident combination hunting-fishing license — \$12.50. This license is valid only for use by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.

- (2a) Resident State fishing license — \$9.50. This license is valid only for use by an individual resident of the State.
- (2b) Lifetime resident State fishing license — \$150.00. This license is valid only for use by an individual resident of the State.
- (3) Resident county fishing license — \$4.50. This license is valid only for use by an individual resident of the State within the county in which he resides.
- (4) Resident State daily license — \$1.25. This license is valid only for use during the day indicated by an individual resident of the State.
- (4a) Nonresident sportsman combination license — \$55.00. This license is valid for use by an individual within the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.
- (4b) Nonresident comprehensive daily fishing license — \$6.00. This license is valid only for use during the day indicated by an individual within the State.
- (5) Nonresident State fishing license — \$15.50. This license is valid for use by an individual within the State.
- (6) Nonresident State daily license — \$2.25. This license is valid only for use during the day indicated by an individual within the State.
- (7) Repealed by Session Laws 1975, c. 197, s. 15.
- (8) Lifetime fishing license for the legally blind — No charge. This license is valid only for use by an individual resident of the State who has been certified by the Department of Human Resources as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential. This license is valid for the life of the individual so long as he remains legally blind.
- (9) Disabled veteran lifetime combination hunting-fishing license — \$7.50. This license is valid only for use by an individual resident of the State who is a fifty percent (50%) or more disabled war veteran as determined by the Veterans Administration. The license is valid for the life of the individual so long as he remains fifty percent (50%) or more disabled.
- (10) [Reserved.]
- (11) Age 70 lifetime combination hunting-fishing license — \$10.00. This license is valid only for use by an individual resident of the State who has attained the age of 70 years. The license is valid for the life of the individual.
- (12) Totally disabled resident combination hunting-fishing license — \$7.50. This license is valid only for use by an individual resident of the State who is totally disabled (physically incapable of being gainfully employed). This license is valid for the life of the individual so long as he remains totally disabled.

(e) A special guest fishing license, to be sold for an annual fee of twenty-five dollars (\$25.00) upon application to the Wildlife Resources Commission in the form which they may require, may be purchased by the owner or lessee of private property bordering inland or joint fishing waters entitling persons to fish from such waterfront property and any pier or dock originating on such property without any additional inland fishing license. This license is applicable only to private property and private docks and piers and is not valid for any property, pier, or dock operated for any commercial purpose whatsoever. The guest fishing license shall not be in force unless displayed on the premises of the property and only entitles fishing without additional license to persons fishing from the licensed property and then only within the private property lines of the site of posting. The guest fishing license is not transferable as to person or location. These provisions shall not apply to residents of the Cherokee Indian Reservation. (1929, c. 335, ss. 1-4; 1931, c. 351; 1933, c. 236; 1935, c. 478; 1945, c. 529, ss. 1, 2; c. 567, ss. 1-4; 1949, c. 1203, s.

2; 1953, c. 1147; 1955, c. 198, s. 1; 1957, c. 849, s. 2; 1959, c. 164; 1961, c. 312; c. 834, ss. 3-6; 1965, c. 957, s. 2; 1969, c. 761; c. 1042, s. 9; 1973, c. 476, s. 143; c. 504; 1975, c. 197, s. 15; 1979, c. 737, ss. 1, 2; c. 748, s. 6; c. 830, s. 1; 1979, 2nd Sess., c. 1178, ss. 3, 5; 1981, c. 482, s. 5.)

Cross References. — As to wildlife endowment fund, see § 143-250.1.

Effect of Amendments. — Session Laws 1979, c. 748, s. 6, effective Aug. 1, 1979, and Jan. 1, 1980, increased the fees throughout subsection (d), substituted "113-97" [now 113-270.2] for "113-95" at the end of subdivision (2) of subsection (d), added the second sentence of subdivision (3) of subsection (d), changed the licenses in subdivisions (4) and (5) from 3-day licenses to daily licenses, and made other changes.

Session Laws 1979, c. 748, s. 9, makes the amendment to subsection (d) effective Jan. 1, 1980, except that the amendment to subdivision (2) is made effective Aug. 1, 1979. Session Laws 1979, c. 748, s. 9, further provides: "That in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on Aug. 1, 1979, are valid through Sept. 1, 1979."

Session Laws 1979, c. 737, effective Jan. 1, 1980, added subsection (e).

Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and Aug. 1, 1980, rewrote subsection (d).

Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the fees in subdivisions (1a), (2), (2a), (3), (4a) and (5) in subsection (d), rewrote subdivision (4) so as to provide for a resident daily license fee of \$1.25 rather than a resident three-day license fee of \$3.00 and rewrote subdivision (6) so as to provide for a nonresident daily license with a fee of \$2.25 rather than a nonresident three-day license fee of \$5.50. The amendment also added subdivisions (1b) and (4b) to subsection (d), effective January 1, 1981.

The 1981 amendment added subdivisions (1c) and (2b) to subsection (d).

§ 113-272. Special trout licenses.

(a) In addition to such hook-and-line fishing license as may be required in G.S. 113-271, no one may fish in public mountain trout waters without having first procured a current and valid special trout license.

(b) Except as otherwise indicated, special trout licenses are annual licenses issued beginning January 1 each year running until the following December 31.

(c) Public mountain trout waters are those waters so designated by the Wildlife Resources Commission which are managed and regulated to sustain a mountain trout fishery.

(d) The special trout licenses issued by the Wildlife Resources Commission are as follows:

(1) Repealed by Session Laws 1979, c. 830, s. 1, effective August 1, 1980.

(1a) Resident sportsman combination license — \$27.50. This license is valid in public mountain trout waters for use only by an individual resident of the State. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.

(1a1) Resident comprehensive daily fishing license — \$4.00. This license is valid for use during the day indicated in public mountain trout waters only by an individual resident of the State.

(1a2) Lifetime sportsman combination licenses. — These licenses are valid only for use by individual holders and are of the following types depending on the holders' ages on the dates of issue:

a. Type I available only to an individual under one year of age — \$100.00.

b. Type Y available only to an individual under 12 years of age — \$200.00.

- c. Type A available to a resident individual of any age — \$300.00.
- (1b) Resident special trout license — \$4.50. This license is valid only for use by an individual resident of the State in public mountain trout waters.
 - (1c) Nonresident sportsman combination license — \$55.00. This license is valid for use by an individual within the State in public mountain trout waters. It is valid during the period set for annual hunting licenses in G.S. 113-270.2.
 - (1d) Nonresident comprehensive daily fishing license — \$6.00. This license is valid only for use during the day indicated in public mountain trout waters by an individual within the State.
 - (2) Nonresident special trout license — \$8.00. This license is valid for use by an individual within the State in public mountain trout waters.
 - (3) Lifetime fishing license for the legally blind — No charge. This license is valid in public mountain trout waters for use only by an individual resident of the State. It is issued upon the terms set out in G.S. 113-271(d)(8). (1953, cc. 432, 828; 1955, c. 198, s. 2; 1961, c. 834, s. 2; 1965, c. 957, s. 2; 1969, c. 1042, s. 10; 1973, c. 1262, s. 18; 1975, c. 197, s. 16; 1979, c. 748, s. 7; c. 830, s. 1; 1979, 2nd Sess., c. 1178, ss. 4, 5; 1981, c. 482, s. 6.)

Cross References. — As to wildlife endowment fund, see § 143-250.1.

Effect of Amendments. — Session Laws 1979, c. 748, s. 7, effective Jan. 1, 1980, increased the fees in subdivisions (1) and (2) of subsection (d). Session Laws 1979, c. 748, s. 9, provides, in part: "that in order to allow adequate time for the printing and distribution of hunting licenses and combination hunting and fishing licenses incorporating the amended fees, the 1978-79 hunting licenses and combination hunting and fishing licenses which are scheduled to expire on August 1, 1979, are valid through September 1, 1979."

Session Laws 1979, c. 830, s. 1, effective July 1, 1980 and Aug. 1, 1980, repealed subdivision

(1) of subsection (d), effective Aug. 1, 1980, reduced the fee in subdivision (2) of subsection (d), and added subdivisions (1a), (b), (1c), and (3) of subsection (d). Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on Aug. 1, 1980."

The 1979, 2nd Sess., amendment, effective July 1, 1980, increased the fees in subdivisions (1a), (1b), (1c) and (2) of subsection (d), and, effective January 1, 1981, added subdivisions (1a1) and (1d) to subsection (d).

The 1981 amendment added subdivision (1a2) to subsection (d).

§ 113-272.1: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those

provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980."

§ 113-272.2. Special device licenses.

(a) Except as otherwise specifically provided by law, no one may fish in inland fishing waters with any special device without having first procured a current and valid special device license. Special devices are all devices used in fishing other than hook and line.

(b) All special device licenses are annual licenses issued beginning January 1 each year running until the following December 31.

(c) The special device licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident special device license — \$10.00. Except as regulations of the Wildlife Resources Commission provide for use of equipment by more

than one person, this license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with special devices authorized by the regulations of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the user of the license to specified registered equipment, require tagging of items of equipment, charge up to one dollar (\$1.00) per tag issued, and require periodic catch data reports. Unless specifically prohibited, nongame fish lawfully taken under this license may be sold.

- (2) Nonresident special device license — \$25.00. Except as regulations of the Wildlife Resources Commission provide for use of equipment by more than one person, this license is valid for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (1) above.

- (3) Resident personal use special device license — \$3.00. This license is valid only for use by an individual resident of the State. It authorizes the taking of nongame fish from inland fishing waters with special devices authorized by the regulations of the Wildlife Resources Commission for use in specified waters. The Wildlife Resources Commission may restrict the total amount of equipment used, and may require tagging of unattended equipment. Fish taken under this license may not be sold.

- (4) Nonresident personal use special device license — \$10.00. This license is valid for use by an individual within the State. It is otherwise subject to the terms and conditions set out in subdivision (3) above.

(d) Any individual who holds a current and valid primitive weapons hunting license may take nongame fish from inland fishing waters for personal use with a bow and arrow in accordance with the regulations of the Wildlife Resources Commission without being required to obtain a special device license. (1979, c. 830, s. 1; 1981, c. 620, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subsection (d).

§ 113-272.3. Special provisions respecting fishing licenses; grabbling; taking bait fish; use of landing nets; lifetime licenses issued from Wildlife Resources Commission headquarters; personalized lifetime sportsman combination licenses.

(a) The Wildlife Resources Commission by regulation may define the meaning of "hook and line" and "special device" as applied to fishing techniques. Any technique of fishing that may be lawfully authorized which employs neither the use of any special device nor hook and line must be pursued under the appropriate hook-and-line fishing license.

(b) In accordance with established fishing customs and the orderly conservation of wildlife resources, the Wildlife Resources Commission may by regulation provide for use of nets or other special devices which it may authorize as an incident to hook-and-line fishing or for procuring bait fish without requiring a special device license. In this instance, however, the individual fishing must meet applicable hook-and-line license requirements.

(c) Lifetime licenses are issued from the Wildlife Resources Commission headquarters. Each application for a Type I or Type Y lifetime sportsman combination license must be accompanied by a certified copy of the birth certificate of the individual to be named as the license holder.

(d) In issuing lifetime sportsman combination licenses, the Wildlife Resources Commission is authorized to adopt regulations to establish a personalized series and to charge a five dollar (\$5.00) administrative fee, to be deposited in the Wildlife Fund, to defray the cost of issuance of the personalized license. (1979, c. 830, s. 1; 1981, c. 482, s. 8; c. 620, s. 3.)

Effect of Amendments. — The first 1981 amendment added subsection (c). The second 1981 amendment, effective July 1, 1981, added subsection (d).

§ 113-272.4. Collection licenses.

(a) In the interest of the orderly and efficient conservation of wildlife resources, the Wildlife Resources Commission may provide for the licensing of qualified individuals to take any of the wildlife resources of the State under a collection license that may serve in lieu of any other license required in this Article. This license authorizes incidental transportation and possession of the wildlife resources necessary to implement the authorized purposes of the taking, but the Wildlife Resources Commission in its discretion may additionally impose permit requirements under subsection (d) below and G.S. 113-274.

(b) The Wildlife Resources Commission may delegate to the executive director the authority to impose time limits during which the license is valid and restrictions as to what may be taken and method of taking and possession, in the interests of conservation objectives. The Executive Director through his responsible agents must determine whether a particular license applicant meets the standards and qualifications for licensees set by the Wildlife Resources Commission. Methods of taking under a collection license need not be restricted to those applicable to ordinary hunting, trapping, or fishing, but the licensee must observe the restrictions as to taking, transportation, and possession imposed by the Executive Director upon the granting of the license.

(c) When a more limited duration period is not set by the Executive Director in implementing the regulations of the Wildlife Resources Commission, collection licenses are valid from January 1 through December 31 in any year. This license is issued upon payment of five dollars (\$5.00), but the Wildlife Resources Commission may provide for issuance without charge to licensees who represent educational or scientific institutions or some governmental agency.

(d) As necessary, the Executive Director may administratively impose on licensees under this section restrictions upon individuals taking, transporting, or possessing under the license which will permit ready identification and control of those involved in the interest of efficient administration of laws pertaining to wildlife resources. Restrictions may include requirements as to record keeping, tagging, marking packages, cages, or containers and exhibition of additional limited-purpose and limited-time permits that may be issued without charge to cover particular activities and other actions that may be administratively required in the reasonable implementation of the objectives of this Subchapter.

(e) If the Executive Director deems it administratively appropriate and convenient to do so, in the interests of simplifying the administration of licensing requirements, he may grant particular licensees under this section the privilege of utilizing assistants in taking, transporting, or possessing wildlife resources who themselves are not licensed. Any assistants so taking, transporting, or possessing wildlife resources must have readily available for inspection a written authorization from the licensee to engage in the activity in question. The written authorization must contain information administratively required by the Executive Director, and a copy of the authorization must

be placed in the mail addressed to the Executive Director or his designated agent before any assistant acts under the authorization. In his discretion the Executive Director may refuse to issue, refuse to renew, or revoke the privilege conferred in this subsection. If this is done, each individual engaged in taking, transporting, or possessing wildlife resources under this section must meet all applicable licensing and permit requirements. (1979, c. 830, s. 1.)

§ 113-272.5. Captivity license.

(a) In the interests of humane treatment of wild animals and wild birds that are crippled, tame, or otherwise unfit for immediate release into their natural habitat, the Wildlife Resources Commission may license qualified individuals to hold at a specified location one or more of any particular species of wild animal or wild bird alive in captivity. Before issuing this license, the Executive Director must satisfy himself that issuance of the license is appropriate under the objectives of this Subchapter, and that the wild animal or wild bird was not acquired unlawfully or merely as a pet. Upon refusing to issue the captivity license, the Executive Director may either take possession of the wild animal or wild bird for appropriate disposition or issue a captivity permit under G.S. 113-274(c)(1b) for a limited period until the holder makes proper disposition of the wild animal or wild bird.

(b) Unless a shorter time is set for a license upon its issuance under the provisions of subsection (c), captivity licenses are annual licenses issued beginning January 1 each year and running until the following December 31. This license is issued upon payment of five dollars (\$5.00) to the Wildlife Resources Commission.

(c) The Wildlife Resources Commission may require standards of caging and care and reports to and supervision by employees of the Wildlife Resources Commission as necessary to insure humane treatment and furtherance of the objectives of this Subchapter. The Executive Director in implementing the provisions of this section may administratively impose through responsible agents and employees restrictions upon the mode of captivity that he deems necessary, including prescribing methods of treatment and handling designed, if possible, to enable the wild animal or wild bird to become self-sufficient and requiring that the wild animal or wild bird be set free when self-sufficiency is attained. To this end, the Executive Director may issue the captivity license with an expiration date earlier than December 31 and may also act to terminate any captivity license earlier than the expiration date for good cause.

(d) Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders possession of the wild animal or wild bird unlawful.

(e) No captivity license may be issued for any cougar (*Felis concolor*), except to:

- (1) A bona fide publicly supported zoo.
- (2) An educational or scientific research institution.
- (3) An individual who lawfully possessed the cougar on June 29, 1977. The license may not be granted, however, for possession of a cougar within a municipality which prohibits such possession by ordinance.
- (4) An individual who holds a cougar without caging under conditions simulating a natural habitat, the development of which is in accord with plans and specifications developed by the holder and approved by the Wildlife Resources Commission.

(f) The licensing provisions of this section apply to black bears held in captivity, but, to the extent that it differs from this section, Article 2 of Chapter 19A of the General Statutes governs the keeping of black bears in captivity. (1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 3; 1981, c. 575, s. 1.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "at a specified location one or more of any particular species of" for "a particular" in the first sentence of subsection (a).

The 1981 amendment added subdivision (4) to subsection (e).

§ 113-273. Dealer licenses.

(a) "Dealer" Defined; All Licenses Annual. — As used in this section, the word "dealer" includes all persons or individuals required to be licensed under the terms of this section. Except when indicated otherwise, dealer licenses are annual licenses issued beginning January 1 each year running until the following December 31.

(b) License Required; Regulations Governing Licensee. — Except as otherwise provided, no person may engage in any activity for which a dealer license is provided under this section without first having procured a current and valid dealer license for that activity. In implementing the provisions of this section, the Wildlife Resources Commission may by regulation govern every aspect of the licensee's dealings in wildlife resources. Specifically, these regulations may require dealers to:

- (1) Implement a system of tagging or otherwise identifying and controlling species regulated under the license and pay a reasonable fee, not to exceed two dollars and twenty-five cents (\$2.25), for each tag furnished by the Wildlife Resources Commission;
- (2) Keep records and statistics in record books furnished by the Wildlife Resources Commission, and pay a reasonable charge to defray the cost of furnishing the books;
- (3) Be subject to inspection at reasonable hours and audit of wildlife resources and pertinent records and equipment;
- (4) Make periodic reports;
- (5) Post performance bonds payable to the Wildlife Resources Commission conditioned upon faithful compliance with provisions of law; and
- (6) Otherwise comply with reasonable regulations and administrative requirements that may be imposed under the authority of this section.

(c) Commercial Trout Pond License. — As used in this subsection, a "commercial trout pond" is a fish tank meeting standards set by the Wildlife Resources Commission or an artificial impoundment of three acres or less lying on private land and not on a natural stream, but which may be supplied through screened and regulated supply lines. A commercial trout pond must be stocked exclusively with hatchery-reared mountain trout obtained from hatcheries approved by the Wildlife Resources Commission. The Wildlife Resources Commission may by regulation prescribe qualifications of operators of commercial trout ponds, standards of operation, and the conditions under which trout from such ponds may be taken, transported, possessed, bought, and sold. Commercial trout pond licenses issued by the Wildlife Resources Commission are as follows:

- (1) Commercial trout fishing pond license, twenty-five dollars (\$25.00). Authorizes the responsible licensed pond owner or operator to sell trout taken by fishermen from the pond to such fishermen.
- (2) Commercial trout holding pond license, five dollars (\$5.00). Authorizes the responsible licensed pond owner or operator to hold live trout for sale under conditions prescribed by the Wildlife Resources Commission. No person holding a fish propagation license for trout under subsection (e) need also procure this license.

(d) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(e) Fish Propagation License. — The Wildlife Resources Commission may by regulation authorize and license the operation of fish hatcheries for species of

fish which may be found in inland fishing waters. The Wildlife Resources Commission may prescribe standards of operation, qualifications of operators, and the conditions under which fish may be taken, transported, possessed, bought, and sold. Fish propagation licenses issued by the Wildlife Resources Commission are as follows:

- (1) Trout propagation license, twenty-five dollars (\$25.00). Authorizes artificial propagation and sale of all species of freshwater trout permitted under the regulations of the Wildlife Resources Commission in accordance with those regulations.
- (2) Restricted propagation license, twenty-five dollars (\$25.00). Authorizes artificial propagation and sale of species of fish other than trout designated in the license, in accordance with governing regulations of the Wildlife Resources Commission.

(f) Fur-Dealer License. — Except as otherwise provided in this subsection, any individual in this State who deals in furs must obtain an appropriate fur-dealer license. For the purposes of this subsection, "dealing in furs" is engaging in the business of buying or selling fur-bearing animals or other wild animals that may lawfully be sold, the raw furs, pelts, or skins of those animals, or the furs, pelts, or skins of wild animals which may not themselves be sold but whose fur, pelt, or skin may lawfully be sold. A hunter or trapper who has lawfully taken wild animals whose fur, pelt, or skin is permitted to be sold under this subsection is not considered a fur dealer if he exclusively sells the animals or the furs, pelts, and skins, as appropriate, to licensed fur dealers. All fur-dealer licenses are annual licenses issued beginning August 1 each year running until the following July 31. Fur-dealer licenses issued by the Wildlife Resources Commission are as follows:

- (1) Resident fur-dealer license, fifty dollars (\$50.00). Authorizes an individual resident of the State to deal in furs in accordance with the regulations of the Wildlife Resources Commission.
- (2) Nonresident fur-dealer license, one hundred fifty dollars (\$150.00). Authorizes an individual within the State to deal in furs in accordance with the regulations of the Wildlife Resources Commission.
- (3) Fur-dealer station license, one hundred dollars (\$100.00). Authorizes a person or individual to deal in furs at an established location where fur dealings occur under the supervision of a responsible individual manager named in the license. Individual employees of the business dealing in furs solely at the established location under the supervision of the manager need not acquire an individual license. Any employee who also deals in furs outside the established location must obtain the appropriate individual license. Individuals dealing in furs at an established location may elect to do so under their individual licenses.

The Executive Director may administratively provide for reissuance of a station license without charge for the remainder of the year when either a business continues at an established location under a new supervising manager or the business changes to a new location. Before reissuing the license, however, the Executive Director must satisfy himself that there is a continuation of essentially the same business previously licensed and that any new supervising manager meets the qualifications imposed by regulations of the Wildlife Resources Commission. The supervising manager must file the names of all employees of the business covered by a fur-dealer station license, whether temporary or permanent, including employees who process or skin the animals.

The Executive Director must furnish supervising managers and individual licensees with forms or record books for recording required information as to purchase, sale, importation, exportation, and other dealings, and make a reasonable charge to cover the costs of any record books furnished. It is unlawful

for anyone dealing in furs to fail to submit reports required by regulations or reasonable administrative directives.

(g) **Controlled Shooting Preserve Operator License.** — The Wildlife Resources Commission is authorized by regulation to set standards for and to license the operation of controlled shooting preserves operated by private persons. A "controlled shooting preserve" is an area on which only domestically raised game birds other than wild turkeys are taken. This license may be purchased for a fee of fifty dollars (\$50.00), and is an annual license issued beginning August 1 each year running until the following July 1.

(h) **Game Bird Propagation License.** — No person may propagate game birds in captivity or possess game birds for propagation without first procuring a license under this subsection. The Wildlife Resources Commission may by regulation prescribe the activities to be covered by the propagation license, which species of game birds may be propagated, and the manner of keeping and raising the birds, in accordance with the overall objectives of conservation of wildlife resources. Except as limited by this subsection, propagated game birds may be raised and sold for purposes of propagation, stocking, food, or taking in connection with dog training as authorized in G.S. 113-291.1(d). Migratory game bird operations authorized under this subsection must also comply with any applicable provisions of federal law and regulations. The Wildlife Resources Commission may impose requirements as to shipping, marking packages, banding, tagging, or wrapping the propagated birds and other restrictions designed to reduce the change of illicit game birds being disposed of under the cover of licensed operations. The Wildlife Resources Commission may make a reasonable charge for any bands, tags, or wrappers furnished propagators. The game bird propagation license is issued by the Wildlife Resources Commission upon payment of a fee of five dollars (\$5.00). It authorizes a person or individual to propagate and sell game birds designated in the license, in accordance with the regulations of the Wildlife Resources Commission, except:

- (1) Wild turkey and ruffed grouse may not be sold for food.
- (2) Production and sale of pen-raised quail for food purposes is under the exclusive control of the Department of Agriculture. The Wildlife Resources Commission, however, may regulate the possession, propagation, and transportation of live pen-raised quail.

It is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) in addition to such other punishment the court may impose in its discretion to sell wild turkey or ruffed grouse for food purposes or to sell quail other than lawfully acquired pen-raised quail for food purposes.

(i), (j) [Reserved.]

(k) **Taxidermy License.** — Any individual who engages in taxidermy involving wildlife for any compensation, including reimbursement for the cost of materials, must first procure a taxidermy license. This license is an annual license issued by the Wildlife Resources Commission for ten dollars (\$10.00). The Wildlife Resources Commission must require a licensee to keep records concerning any wildlife taken or possessed by him; to keep records of the names and addresses of persons bringing him wildlife, the names and addresses of persons taking the wildlife if different, and other information concerning the origin of the wildlife; to inspect any applicable licenses or permits pertaining to the taking and possession of wildlife brought to him; to restrict him to taxidermy upon lawfully acquired wildlife; and to keep other pertinent records. No taxidermist subject to license requirements may sell any game or game fish in which he deals except that a taxidermist may acquire a valid possessory lien upon game or game fish under the terms of Chapter 44A of the General Statutes and, with a permit from the Executive Director, may sell the game or game fish under the procedure authorized in Chapter 44A. Wildlife acquired by a taxidermist is deemed "personal property" for the purposes of Chapter

44A. (1929, c. 333, ss. 1-7; c. 198, ss. 1, 2, 4; 1933, c. 337, ss. 1-4; c. 430, s. 1; 1935, c. 471, ss. 1-3; c. 486, ss. 4, 12, 21; 1937, c. 45, s. 1; 1945, c. 617; 1949, c. 1203, s. 1; 1957, c. 386; c. 841; c. 849, s. 1; 1959, c. 304; 1961, c. 311; c. 834, s. 1; c. 1056; 1965, c. 957, s. 2; 1967, c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 515, s. 5; c. 705, ss. 1, 2; 1973, c. 1098; c. 1262, ss. 18, 86; 1975, c. 197, ss. 1-4, 13, 14; 1977, c. 658; 1979, c. 830, s. 1; 1981, c. 620, ss. 4-6.)

Cross References. — As to regulation of pen-raised quail by Department of Agriculture and Wildlife Resources Commission, see § 106-549.94.

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, deleted "all" preceding "dealer" in the second sentence and

merged the former second and third sentences by deleting a period and "Annual dealer licenses are" following "annual licenses" in subsection (a), added the fourth sentence of subsection (f) and added the language beginning "and is an annual" in the last sentence of subsection (g).

§ 113-274. Permits.

(a) As used in this Article, the word "permit" refers to a written authorization issued without charge by an employee or agent of the Wildlife Resources Commission to an individual or a person to conduct some activity over which the Wildlife Resources Commission has jurisdiction. When sale of wildlife resources is permitted, regulations or the directives of the executive director may require the retention of invoices or copies of invoices in lieu of a permit.

(b) Except as otherwise specifically provided, no one may engage in any activity for which a permit is required without having first procured a current and valid permit.

(c) The Wildlife Resources Commission may issue the following permits:

(1) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(1a) Depredation Permit. — Authorizes the taking, destruction, transfer, removal, transplanting, or driving away of undesirable, harmful, predatory, excess, or surplus wildlife or wildlife resources. The permit must state the manner of taking and the disposition of wildlife or wildlife resources authorized or required and the time for which the permit is valid, plus other restrictions that may be administratively imposed in accordance with regulations of the Wildlife Resources Commission. No depredation permit or any license is needed for the owner or lessee of property to take wildlife while committing depredations upon the property. The Wildlife Resources Commission may regulate the manner of taking and the disposition of wildlife taken without permit or license, including wildlife killed accidentally by motor vehicle or in any other manner.

(1b) Captivity Permit. — Authorizes the possession of live wildlife that may lawfully be permitted to be retained alive, in accordance with governing regulations of the Wildlife Resources Commission. This permit may not substitute for any required collection license or captivity license, but may be temporarily issued for possession of wild animals or wild birds pending action on a captivity license or following its denial or termination. If this permit is issued for fish to be held indefinitely, the Wildlife Resources Commission may provide for periodic renewals of the permit, at least once each three years, to insure a review of the circumstances and conditions under which fish are kept. Wild animals and wild birds kept temporarily in captivity under this permit must be humanely treated and in accordance with any stipulations in the permit, but the standards of caging and care applicable to species kept under the captivity license do not apply unless specified in the permit. Any substantial deviation from reason-

able requirements imposed by regulation or administratively under the authority of this section renders the possession of the wildlife unlawful.

- (1c) **Possession Permit.** — Authorizes the possession of dead wildlife or other wildlife resources lawfully acquired. The Wildlife Resources Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the possession of wildlife. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the possession of the wildlife unlawful.
- (2) **Transportation Permit.** — The Wildlife Resources Commission may require the use of transportation permits by persons required to be licensed under this Article, or by persons and individuals exempt from license requirements, while transporting wildlife resources within the State — as necessary to discourage unlawful taking or dealing in wildlife resources and to control and promote the orderly and systematic transportation of wildlife resources within, into, through, and out of the State. Transportation permits may be issued for wildlife transported either dead or alive, in accordance with restrictions that may be reasonably imposed. When convenient, regulations or administrative directives may require the retention and use of an invoice or memorandum of sale, or the license or permit authorizing the taking or acquisition of the wildlife resources, as a transportation permit. When circumstances warrant, however, a separate additional transportation permit may be required. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the transportation of the wildlife resources unlawful.
- (3) **Exportation or Importation Permit.** — Authorizes the exportation or importation of wildlife resources from or into the State or from county to county. The Wildlife Resources Commission may by regulation implement the issuance and supervision of this permit, in accordance with governing laws and regulations respecting the exportation and importation of wildlife resources. Any substantial deviation from reasonable requirements imposed by regulation or administratively under the authority of this section renders the importation or exportation of the wildlife resources unlawful.
- (3a) **Trophy Wildlife Sale Permit.** — Authorizes the owner of lawfully taken and possessed dead wildlife specimens or their parts that are mounted, stuffed, or otherwise permanently preserved to sell identified individual specimens that may lawfully be sold under applicable laws and regulations.
- (3b) **Trout Sale Permit.** — Authorizes the sale at wholesale or retail of dead artificially-propagated mountain trout for food purposes if the trout have been lawfully acquired from a hatchery approved by the Wildlife Resources Commission and are appropriately wrapped or otherwise identified as hatchery-reared trout as required by governing regulations. No person who holds a license that authorizes the sale of trout need purchase this permit.
- (4) **Other Permits.** — In implementing the provisions of this Subchapter, the Wildlife Resources Commission may issue permits for taking, purchase, or sale of wildlife resources if the activity is lawfully authorized, if there is a need for control of the activity, and no other license or permit is applicable. In addition, if a specific statute so provides, a permit under this subdivision may be required in addition to a license when there is a need for closer control than provided by the license.

(1935, c. 486, ss. 4, 22; 1941, c. 231, s. 1; 1965, c. 957, s. 2; 1971, c. 423, s. 2; c. 809, s. 1; 1973, c. 1262, s. 18; 1977, c. 794, s. 1; 1979, c. 830, s. 1.)

§ 113-275. General provisions respecting licenses and permits.

(a) The Wildlife Resources Commission is authorized to make agreements with other jurisdictions as to reciprocal honoring of licenses in the best interests of the conservation of wildlife resources.

(b) Every license issued under the provisions of this Article is effective beginning upon its date of issuance unless the license expressly provides to the contrary, in accordance with regulations of the Wildlife Resources Commission and such administrative authority to set future effective dates in particular types of cases as may be delegated by the Wildlife Resources Commission to responsible employees or agents.

(b1) No resident hunting or fishing license issued to a qualified applicant under the provisions of G.S. 113-270.2, 113-270.3, 113-271, or 113-272 becomes invalid for use during the term for which it is issued by reason of a removal of the residence of the licensee to another state. This provision applies both to renewable and lifetime licenses.

(c) Every license issued under the provisions of this Article must be sold for the full prescribed amount notwithstanding that a portion of the prescribed license period may have elapsed prior to the license application.

(c1) Upon receipt of a proper application together with a fee of two dollars (\$2.00), the Wildlife Resources Commission may issue a new license or permit to replace one that has been lost or destroyed before its expiration. The application must be on a form of the Wildlife Resources Commission setting forth information in sufficient detail to allow ready identification of the lost or destroyed license or permit and ascertainment of the applicant's continued entitlement to it.

(d) In implementing the sale and distribution of licenses issued under this Article, the Wildlife Resources Commission may require license applicants to disclose such information as necessary for determining the applicant's eligibility for a particular license. Such information as deemed desirable to assist in enforcement of license requirements may be required to be recorded on the face of any license. Fixing the form of the license may be by reasonable administrative directive, and requirements as to such form need not be embodied in regulations of the Wildlife Resources Commission in order to be validly required.

(e) Where employees of the Wildlife Resources Commission sell licenses of a type also sold through license agents, such employees must sell the licenses for the full amount and remit such full amount to the Wildlife Resources Commission without any deduction of the stipulated license agent's fee.

(f) Except as otherwise specifically provided by statute or except as the Wildlife Resources Commission may by regulation prescribe to the contrary:

- (1) All licenses and permits under this Article must be kept ready at hand by or about the person of individual licensees and permittees while engaged in the regulated operations;
- (2) All licenses and permits under this Article are nontransferable; and
- (3) All individuals engaged in operations subject to license or permit requirements must have an individual license or permit — except where such individuals are in the employ of and under the supervision of someone who has the license or permit or acceptable evidence of the same at hand and the activity is one for which a person not an individual may acquire a license.

(g) It is unlawful to buy, sell, lend, borrow, or in any other way transfer or receive or attempt to do any such things with respect to any nontransferable license or permit for the purpose of circumventing the requirements of this Article.

(h) It is unlawful for any person engaged in regulated operations under this Article to refuse to exhibit or display any required license, permit, or identification upon the request of any employee or agent of the Wildlife Resources Commission or of any officer authorized to enforce the provisions of this Article.

(i) It is unlawful to refuse to comply with any provisions of this Article or of regulations and administrative requirements reasonably promulgated under the authority of this Article.

(j) It is a misdemeanor punishable in the discretion of the court for any person;

- (1) Knowingly to engage in any activity regulated under this Article with an improper, false, or altered license or permit;
- (2) Knowingly to make any application for a license or permit to which he is not entitled;
- (3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article; or
- (4) To counterfeit, alter, or falsify any application, license, or permit under this Article. (1929, c. 335, ss. 6, 10, 11; 1945, c. 567, ss. 5, 6; 1961, c. 329; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 1981, c. 620, ss. 7, 8.)

Effect of Amendments. — The 1981 amendment added subsections (b1) and (c1).

§ 113-276. Exemptions and exceptions to license and permit requirements.

(a), (b) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(c) Except as otherwise provided in this Subchapter, every landholder, his spouse, and dependents under 18 years of age residing with him may take wildlife upon the land held by the landholder without any license required by G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, 113-271, or 113-272.

(d) Except as otherwise provided in this Subchapter, individuals under 16 years of age are exempt from the hunting, trapping, and fishing license requirements of G.S. 113-270.2, 113-270.3(b) except for subdivision (5), 113-270.5, and 113-272 if:

- (1) He is accompanied by a responsible adult who is in compliance with applicable license requirements; or
- (2) He is carrying a current and valid license appropriate to the activity which has been issued to one of his parents or to his guardian.

Individuals under 16 years of age are exempt from the fishing license requirements of G.S. 113-271.

(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing-license requirements of G.S. 113-271. "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area

opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such river or stream so long as the course of the river or streams substantially represents or follows the course of such boundary line.

(f) A special device license is not required when a landing net is used:

- (1) To take nongame fish in inland fishing waters; or
- (2) To assist in taking fish in inland fishing waters when the initial and primary method of taking is by the use of hook and line — so long as applicable hook-and-line fishing license requirements are met.

As used in this subsection, a "landing net" is a net with a handle not exceeding eight feet in length and with a hoop or frame to which the net is attached not exceeding 60 inches along its outer perimeter.

(g) Bow nets covered by a special device license may be used in waters and during the seasons authorized in the regulations of the Wildlife Resources Commission by an individual other than the licensee with the permission of the licensee. The individual using another's bow net must also secure the net owner's special device license and keep it on or about his person while fishing in inland fishing waters.

(h) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(i) A food server may prepare edible wildlife lawfully taken and possessed by a patron for serving to the patron and any guest he may have. The Executive Director may provide for the keeping of records by the food server necessary for administrative control and supervision with respect to wildlife brought in by patrons.

(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of:

- (1) Purchasing and using the resident fishing licenses provided by G.S. 113-271(d)(2a), (3), and (4); and

- (2) Utilizing the natural-bait exemption in subsection (e) above.

(k) A person may participate in a field trial for beagles without a hunting license if approved in advance by the Executive Director, conducted without the use or possession of firearms, and on an area of not more than 100 acres of private land which is completely and permanently enclosed with a metal fence through which rabbits may not escape or enter at any time.

(l) The fishing license provisions of this Article do not apply upon the lands held in trust by the United States for the Eastern Band of the Cherokee Indians. (1929, c. 335, ss. 1, 10; 1935, c. 486, s. 12; 1937, c. 45, s. 1; 1945, c. 567, ss. 1, 6; c. 617; 1949, c. 1203, s. 1; 1951, c. 1112, s. 2; 1957, c. 849, s. 1; 1959, c. 304; 1961, c. 312; c. 329; c. 834, s. 1; 1963, c. 170; 1965, c. 957, s. 2; 1967, c. 127; c. 654; c. 790; 1969, c. 1030; c. 1042, ss. 1-5; 1971, c. 242; c. 282, s. 1; c. 705, ss. 1, 2; c. 1231, s. 1; 1973, c. 1262, s. 18; 1975, c. 197, ss. 1-4; 1977, c. 191, s. 1; c. 658; 1979, c. 830, s. 1.)

§ 113-276.1. Regulatory authority of Wildlife Resources Commission as to license requirements and exemptions.

In its discretion and in accordance with the best interests of the conservation of wildlife resources, the Wildlife Resources Commission may implement the provisions of this Article with regulations that:

- (1) [Reserved.]
- (2) Regulate license requirements and exemptions applying to the taking of wildlife on particular waters forming or lying across a county boundary where there may be confusion as to the location of the boundary, hardship imposed as to the location of the boundary, or difficulty of administering or enforcing the law with respect to the actual boundary location.
- (3) Require persons subject to license requirements, and persons exempt from license requirements, to carry, display, or produce identification that may be necessary to substantiate the person's entitlement to a particular license or to a particular exemption from license requirements.
- (4) Require individuals aboard vessels or carrying weapons or other gear that may be used to take wildlife resources, and in an area at a time wildlife resources may be taken, to exhibit identification that includes the individual's name and current address. More than one piece of identification, including a vehicle driver license, may be required to be exhibited, if available.
- (5) Implement a system of tagging and reporting fur-bearing animals and big game. Upon the implementation of a tagging system for any species of fur-bearing animal, the Wildlife Resources Commission may charge a reasonable fee to defray its costs, not to exceed two dollars twenty-five cents (\$2.25) per tag, for each tag furnished. The price of the big game hunting license includes the cost of big game tags. (1979, c. 830, s. 1.)

§ 113-276.2. Licensees and permittees subject to administrative control; refusal to issue or reissue, suspension, and revocation of their licenses and permits; court orders of suspension.

- (a) This section applies to the administrative control of:
 - (1) Persons, other than individual hunters and fishermen taking wildlife as sportsmen, holding permits under this Article;
 - (2) Individuals holding special device licenses under G.S. 113-272.2(c)(1) and (2);
 - (3) Individuals holding collection licenses under G.S. 113-272.4;
 - (4) Individuals holding captivity licenses under G.S. 113-272.5; and
 - (5) Persons holding dealer licenses under G.S. 113-273.
- (b) Before issuing any license or permit to persons subject to administrative control under this section, the Executive Director must satisfy himself that the person meets the qualifications set by statute, regulation, or his administrative guidelines. If the person fails to meet the qualifications or if the Executive Director learns of some other cause for believing that issuing the license or permit would be contrary to the best interests of the conservation of wildlife resources, he must refuse to issue the license or permit.
- (c) Before reissuing any license or permit to any person subject to administrative control, the Executive Director must review all available information and apply the same standards that governed initial issuance of the license or permit before he may reissue it.
- (d) Upon refusing to issue or reissue a license or permit under this section, the Executive Director must notify the person in writing of the reasons for his action and inform him that if he contests the Executive Director's action within 10 days he is entitled to a hearing in accordance with the provisions of the Administrative Procedure Act. The notice must be personally served by a law enforcement officer or an agent of the Wildlife Resources Commission or sent

by mail with return receipt requested. If the person refused the license or permit notifies the Executive Director within 10 days of receiving notice that he does contest the action, the Executive Director must formally notify all appropriate parties that a hearing will be conducted in accordance with the provisions of Article 3 of Chapter 150A of the General Statutes and any applicable regulations of the Wildlife Resources Commission. The Wildlife Resources Commission may provide by regulation either for the appointment of a hearing officer or officers or may direct that hearings in some or all classes of cases be conducted by the commission itself. To the extent the procedure governing the hearing is not covered by this section, the Administrative Procedure Act, or regulations of the Wildlife Resources Commission, the Executive Director must direct that appropriate procedures be followed which are not inconsistent with governing statutes and regulations.

(e) If the Executive Director discovers that a person subject to administrative control does not meet, or no longer meets, the qualifications for issuance of the license or permit, has committed a substantial criminal violation of this Subchapter or of its regulations, or has seriously or persistently failed to comply with the terms and conditions upon which the license or permit was issued, he must notify the person in writing of his findings and of his intention to revoke the license or permit unless the person contests the Executive Director's action within 10 days. Any revocation or suspension of a license or permit ordered by a court under G.S. 113-277 runs concurrently with any revocation under this section. The notice must be personally served by a law enforcement officer or an agent of the Wildlife Resources Commission or sent by mail with return receipt requested. If the person notifies the Executive Director that he contests the facts relied upon by the Executive Director or the appropriateness of revocation under the circumstances of the case, the Executive Director must afford the person a hearing in accordance with the provisions of the Administrative Procedure Act and the special provisions of subsection (d) above. If the person does not notify the Executive Director that he contests his action within 10 days of receiving notice, the Executive Director must revoke any license or permit in question as provided in subsection (g) below.

(f) If the decision to revoke the person's license is sustained after all proceedings under the Administrative Procedure Act, including judicial review, if any, the Executive Director must revoke any license or permit in question as provided in subsection (g) below.

(g) Upon revocation of a license or permit, the Executive Director or his agent must request return of the license or permit and all associated forms, tags, record books, inventories, invoice blanks, and other property furnished by the Wildlife Resources Commission or required to be kept by the commission solely in connection with the license or permit. If the person needs to retain a copy of the property returned to the Wildlife Resources Commission for tax purposes or other lawful reason, the person may copy items returned if the copies are clearly marked in a manner that they could not be mistaken for the originals. In securing property to be returned or in otherwise closing out the affairs conducted under the license or permit, agents of the Wildlife Resources Commission may enter at reasonable hours the premises of the person in which wildlife resources or items of property pertaining to the license or permit are kept, or reasonably believed to be kept, to inspect, audit, inventory, remove, or take other appropriate action. Any wildlife resources in the possession of the person which he may no longer possess must be disposed of in accordance with the most nearly appropriate provision of G.S. 113-137. If a person fails to return to an agent of the Wildlife Resources Commission all wildlife resources and other property covered by this subsection; refuses to allow entry by the agent to inspect, audit, remove property, or perform other duties; or otherwise obstructs an agent of the Wildlife Resources Commission in performing his duties under this subsection, he is guilty of a misdemeanor punishable by a fine

of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both. Each day's violation is a separate offense.

(h) No person refused issuance or reissuance of a license or permit under this section, or whose license or permit was revoked, is eligible to apply again for that or any similar license or permit for two years. Upon application, the Executive Director may not grant the license or permit unless the person produces clear evidence, convincing to the Executive Director, that he meets all standards and qualifications and will comply with all requirements of statutes, regulations, and reasonable administrative directives pertaining to the license or permit.

(i) The Executive Director is required to make necessary investigations and cause necessary disclosure of information by all persons subject to administrative control, and all applicants for a license or permit that would place them in this category, to determine that the real party in interest is seeking or has been issued the license or permit. Any attempt to circumvent the provisions of this section is a misdemeanor punishable in the discretion of the court.

(j) So long as a license or permit has not expired, the person contesting any action to revoke retains it and may continue his operations under the license or permit. If the Executive Director determines that the effective conservation of wildlife resources would be seriously impaired by continued unfettered operations or by continued possession of property by the person subject to administrative control, the Executive Director may apply to the appropriate court for an order:

- (1) Placing special reporting and inspection requirements on the person; or
- (2) Impounding some or all of the records or other property associated with the license or permit; or
- (3) Limiting the scope of operations under the license or permit; or
- (4) If there is clear evidence of a serious threat to the conservation of wildlife resources, suspending the operations of the person under the license or permit; or
- (5) Placing other appropriate restrictions, prohibitions, or requirements upon the person. (1979, c. 830, s. 1.)

§ 113-276.3. Mandatory suspension of entitlement to license or permit for fixed period upon conviction of specified offenses.

(a) Upon conviction of a suspension offense under this section, the defendant's entitlement to any license or permit applicable to the type of activity he was engaging in that resulted in the conviction is suspended for the period stated in subsection (d). The period of suspension begins:

- (1) Upon the surrender to an authorized agent of the Wildlife Resources Commission of all applicable licenses and permits; or
- (2) If no licenses or permits are possessed, the defendant fails or refuses to surrender all licenses or permits, or any license or permit is lost or destroyed, upon the Executive Director's placing in the mail the notification required by subsection (c).

(b) If the defendant does not wish to appeal, the presiding judge may order surrender of all applicable licenses and permits to an agent of the Wildlife Resources Commission. If the presiding judge does not order the surrender, or if there is for any other reason a failure by the defendant to surrender all applicable licenses and permits, an authorized agent of the Wildlife Resources Commission must demand surrender. Each day's failure or refusal to surrender a license or permit upon demand, in the absence of satisfactorily accounting for

the failure to do so, is a separate offense. A charge under this subsection does not affect the power of the court to institute contempt proceedings if a failure or refusal to surrender a license or permit also violates a court order. Any agent of the Wildlife Resources Commission accepting surrender of licenses and permits, in the courtroom or at a subsequent time and place, must transmit them to the Executive Director with a written notation of the date of surrender and a report of other pertinent circumstances required by the Executive Director.

(c) The Executive Director must institute a procedure for the systematic reporting to him by protectors or other authorized agents of the Wildlife Resources Commission of all convictions of suspension offenses under this section. Upon obtaining information concerning conviction of a suspension offense and receiving any surrendered licenses and permits, the Executive Director must determine if all appropriate licenses and permits possessed by the defendant have been surrendered; if not, the Executive Director must notify the appropriate agent of the Wildlife Resources Commission to demand surrender or renew a demand for surrender under the terms of subsection (b) if it is feasible to do so. Upon satisfying himself that he has received all licenses and permits for which surrender may feasibly be obtained, if any, the Executive Director must mail the defendant a notice of the suspension of his entitlement to possess or procure any license or permit of the type applicable to the activity engaged in that resulted in conviction of the suspension offense. The notice must specify the commencement and termination dates of the period of suspension that apply under the terms of this section.

(d) Any violation of this Subchapter or of any regulation adopted by the Wildlife Resources Commission under the authority of this Subchapter which is subject to a penalty greater than the one provided in G.S. 113-135(a)(1) is a suspension offense. Conviction of any of the following suspension offenses results in a suspension for a period of two years:

- (1) A violation of G.S. 113-294(b).
- (2) A violation of G.S. 113-294(c).
- (3) A violation of G.S. 113-294(e).
- (4) A violation of G.S. 113-294(k).

A conviction of any other suspension offense results in a suspension for a period of one year.

(e) Unless otherwise provided in the judgment, any action by a court under G.S. 113-277 to suspend entitlement to a license or permit or to suspend or revoke a license or permit supersedes any suspension of entitlement to a license or permit mandated by this section. If the judgment of the court after a conviction for suspension offense does not include any suspension or revocation action, the provisions of this section apply. (1979, c. 830, s. 1; 1981, c. 424, s. 1.)

Effect of Amendments. — The 1981 amendment added subsection (e).

Section 3 of Session Laws 1981, c. 424, provides that the act takes effect on ratification and applies to abrogate all suspensions of

entitlement to licenses and permits then in effect under G.S. 113-276.3(d) that violate the terms of the act. The act was ratified on May 21, 1981.

§ 113-277. Suspension and revocation of licenses and permits in the discretion of the court; suspension of entitlement; court's power concurrent; definition of "conviction"; penalties.

(a) Upon conviction of any licensee or permittee under this Article of a violation of any law or regulation administered by the Wildlife Resources

Commission under the authority of this Subchapter, the court in its discretion may order surrender of that license or permit plus any other license or permit issued by the Wildlife Resources Commission. The court may order suspension of any license or permit for some stipulated period or may order revocation of any license or permit for the remainder of the period for which it is valid. A period of suspension may extend past the expiration date of a license or permit, but no period of suspension longer than two years may be imposed. During any period of suspension or revocation, the licensee or permittee is not entitled to purchase or apply for any replacement, renewal, or additional license or permit regulating the same activity covered by the suspended or revoked license or permit. The Wildlife Resources Commission may by administrative action and by regulation devise procedures designed to implement license or permit suspensions and revocations that may be ordered by the courts.

(a1) Upon conviction of any person who is not a licensee or permittee under this Article of a violation of any law or regulation administered by the Wildlife Resources Commission under the authority of this Subchapter, the court in its discretion may suspend the entitlement of the defendant to possess or procure any specified licenses and permits issued by the Wildlife Resources Commission for a period not to exceed two years.

(a2) A suspension or revocation by a court under this section may be ordered to run concurrently or consecutively with any suspension under G.S. 113-276.3 or any action under G.S. 113-276.2. If no provision is made, G.S. 113-276.3(e) applies, but action by the Executive Director or the Wildlife Resources Commission under G.S. 113-276.2 may not be preempted.

(a3) As used in this Article, the term "conviction" has the same meaning assigned to it in G.S. 113-166(a).

(b) It is a misdemeanor punishable in the discretion of the court for any person during a period of suspension or revocation under the terms of this Article:

- (1) To engage in any activity licensed in this Article without the appropriate license or permit;
- (2) Knowingly to make any application for a license or permit to which he is not entitled;
- (3) Knowingly to make any false, fraudulent, or misleading statement in applying for a license or permit under this Article;
- (4) To counterfeit, alter, or falsify any application, license, or permit under this Article;
- (5) Knowingly to retain and use any license or permit which has been ordered revoked or suspended under the terms of this Article; or
- (6) Willfully to circumvent the terms of suspension or revocation in any manner whatsoever. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 1981, c. 424, s. 2.)

Effect of Amendments. — The 1981 amendment rewrote subsection (a2), which formerly pertained to the same subject matter.

Section 3 of Session Laws 1981, c. 424, provides that the act takes effect on ratification

and applies to abrogate all suspensions of entitlement to licenses and permits then in effect under G.S. 113-276.3(d) that violate the terms of the act. The act was ratified on May 21, 1981.

§§ 113-278 to 113-280: Reserved for future codification purposes.

ARTICLE 21A.

*Regulating Hunting and Fishing on the Registered Property of Another.***§ 113-281. Definitions.**

In addition to the definitions in Article 12 of this Chapter, the following definitions apply in this Article:

- (1) Entry Permit. — The permit described in G.S. 113-283.
- (2) Posted Property. — Registered property that is posted in substantial compliance with G.S. 113-282(d).
- (3) Registered Property. — Property that has been accepted for registration by the Wildlife Resources Commission as provided in G.S. 113-282, and has not been deleted from registration.
- (4) Registrant. — A current applicant of record for a tract of registered property. (1981, c. 854, s. 1.)

Editor's Note. — Section 2 of Session Laws 1981, c. 854 makes the act effective January 1, 1982.

§ 113-282. Registration and posting of property.

(a) A person who controls the hunting, fishing, or hunting and fishing rights to a tract of property and wishes to register it under this Article must apply to the Wildlife Resources Commission in accordance with this section.

(b) The registration application must contain:

- (1) A statement under oath by the applicant that he has the right to control hunting or fishing, or both, on the tract of property to be registered. If the applicant is not a landholder, he must file a copy of his lease or other document granting him control of hunting, fishing, or hunting and fishing rights on the tract.
- (2) Three copies of a description of the tract that will allow law-enforcement officers to determine in the field, and prove in court, whether an individual is within the boundaries of the tract. This description may take the form of a map, plat, aerial photograph showing boundaries, diagram keyed to known landmarks, or any other document or description that graphically demarks the boundaries with sufficient accuracy for use by officers in court and in the field. Any amendment of the boundaries of a registered tract must be accomplished by a new registration application meeting the requirements of this subsection.
- (3) An agreement by the applicant to post the tract in accordance with the requirements of this section and to make a continuing effort to maintain posted notices for the tract.
- (4) An agreement by the applicant to issue or cause issuance of an entry permit to all individuals to whom he or his authorized agent gives permission to hunt or fish on the tract. The applicant must file the name and signature of any agent authorized by him to issue the entry permit, and a registrant must amend his application to rescind the agent's authority and to substitute or add an authorized agent.
- (5) A fee of ten dollars (\$10.00) to cover the administrative costs of processing the registration application.

(c) The Executive Director must examine any submitted application to determine whether the requirements of subsection (b) have been fully met. If

he determines that these requirements have been met and if his inquiries of persons with knowledge of the locality of the tract corroborate the truthfulness and accuracy of the information in the application, he must register the tract of property and notify the registrant of his action. Registration consists of filing the application in a central registry open to the public with an indication whether the property is registered as to hunting, fishing, or both. Upon registration, the Executive Director must send, for the information of protectors and other law-enforcement officers, the two duplicate copies of the description of the tract as follows: (i) to the sheriff of the county in which the tract is located, or to the chief of the county police department if such a department is the primary agency enforcing the criminal laws in a county; and (ii) to an appropriate protector stationed in the area where the tract is located. The Executive Director must also furnish officers with copies of the signatures of registrants and their authorized agents and other pertinent information for enforcement of this Article.

(d) A registrant must post his registered property as soon as practicable after receiving notice that the tract was accepted for registration. Posted notices must measure at least 120 square inches; contain the word "POSTED" in letters at least three inches high; state that the property is registered with the Wildlife Resources Commission and that hunting or fishing, or both, are prohibited without an entry permit; and set out the name and address and, if feasible, the telephone number of the person to contact for an entry permit. At least one notice must be conspicuously posted on the registered property not more than 200 yards apart close to and along the boundaries. In any event at least one notice must be placed on each side of the registered property, one at each corner, and one at each point of entry. A point of entry is where a roadway, trail, path, or other way likely to be used by entering sportsmen leads into the tract. If registered property is posted only with respect to fishing, it is sufficient if the notices prohibit fishing without permission, and are posted at intervals of not more than 200 yards along the stream or shoreline and at points of entry likely to be used by fishermen. Notices posted along the boundaries of a tract must face in the direction that they will be most likely seen by persons entering the tract. Notices posted along a stream or shoreline must face in the direction that they will most likely be seen by anyone intending to fish. With respect to any particular hunter or fisherman, or person who has entered to hunt or fish, there is substantial compliance with this subsection, notwithstanding that one or more of the required notices may be absent, illegible, or improperly placed, if any notice is or has been reasonably visible to him while he was within or approaching the registered tract.

(e) If a registrant loses his proprietary interest or his control of the hunting, fishing, or hunting and fishing rights as to which he has registered the property, he must within 20 days notify the Executive Director. If a new person who controls those rights wishes to continue the registration of the tract, he must make application under the terms of subsection (b), except that no copies of the tract's description need be filed if there is no change of boundaries. When the Executive Director receives the notice under this subsection, or otherwise learns that a registrant has lost his proprietary control of the applicable hunting, fishing, or hunting and fishing rights, and there is no pending application to continue registration of the tract, the Executive Director must immediately delete registration of the tract, notify the presently responsible landholder, and require him to remove any remaining posted notices.

(f) A person who controls the hunting, fishing, or hunting and fishing rights to registered property may apply to the Wildlife Resources Commission in writing to delete the registration of the tract. If he is not the registrant, he must satisfy the Executive Director of his present right to control the applicable hunting and fishing rights. If he is the registrant, his statement that he still controls the applicable rights on the tract is sufficient unless the Executive

Director has reason to require further evidence on this point. Upon determination that an application to delete is proper, the Executive Director must immediately delete registration of the tract, notify the presently responsible landholder, and require him to remove any remaining posted notices.

(g) Any law-enforcement officer or any employee of the Wildlife Resources Commission who determines that a registrant has failed to keep registered property posted in compliance with subsection (d) must so notify the registrant or his agent. If within a reasonable time after notice the registrant fails to take steps to post or repost the tract, or if without regard to notice a registrant is inexcusably or repeatedly negligent in failing to keep the tract properly posted, the Executive Director must immediately delete registration of the tract, notify the presently responsible landholder, and require him to remove any remaining posted notices.

(h) A landholder's failure to cause the removal of all posted signs within a reasonable time after receipt of notice that the tract has been deleted from registration is a misdemeanor punishable as provided in G.S. 113-135. (1981, c. 854, s. 1.)

§ 113-283. Entry permits furnished by Wildlife Resources Commission.

(a) Upon registration of property, the Executive Director must furnish the registrant with a reasonable number of standardized permit forms to be carried by individuals given permission to hunt or fish on the registered property. The Executive Director must establish a procedure for resupplying registrants with entry permits for their registered property as needed.

(b) To be valid, the entry permit must be issued and dated within the previous 12 months and signed by the registrant or an authorized agent whose signature is on file with the Wildlife Resources Commission. (1981, c. 854, s. 1.)

§ 113-284. Affirmative duty of sportsmen to determine if property is registered and posted.

Every individual who enters the property of another to hunt or fish without first having obtained permission from an authorized person in control of hunting and fishing rights or his agent is under a duty to look for posted notices. In the apparent absence of such notices, the individual intending to enter is nevertheless under a duty to determine if practicable whether the property is registered under the terms of this Article. (1981, c. 854, s. 1.)

§ 113-285. Hunting or fishing on registered property of another without permission.

(a) No one may hunt or fish, or enter to hunt or fish, on the registered and posted property of another without having in possession a valid entry permit issued to him.

(b) No one may hunt or fish, or enter to hunt or fish, on the registered property of another without having in possession a valid entry permit issued to him if he has reason to know the property had been posted.

(c) A violation of this section is a misdemeanor punishable as provided in G.S. 113-135. (1981, c. 854, s. 1.)

§ 113-286. Removal, destruction, or mutilation of posted notices.

Unauthorized removal, destruction, or mutilation of posted notices on registered property is a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00), imprisonment not to exceed 90 days, or both. (1981, c. 854, s. 1.)

§ 113-287. General provisions pertaining to enforcement of Article.

(a) If property is registered, the original or a true copy of the application and all supporting items are admissible in evidence. The registrant's affidavit that he has the right to control hunting, fishing, or hunting and fishing on the registered property constitutes prima facie evidence of the facts so asserted. The description filed with the application constitutes prima facie evidence of the boundaries of the registered property.

(b) If an individual hunts or fishes, or enters to hunt or fish, on registered property that is or had been posted, any registrant or his agent, any landholder of that property, and any protector or other law-enforcement officer may request that the individual produce a valid entry permit.

(c) In addition to protectors, it is the duty of sheriffs and their deputies, county police officers, and other law-enforcement officers with general enforcement jurisdiction to investigate reported violations of this Article and to initiate prosecutions when they determine that violations have occurred.

(d) Any entry permit issued to an individual does not substitute for any required hunting or fishing license. (1981, c. 854, s. 1.)

§§ 113-288 to 113-290: Reserved for future codification purposes.

ARTICLE 22.

Regulation of Wildlife.

§ 113-291. General restrictions.

Except as specifically permitted in this Subchapter or in regulations made under the authority of this Subchapter, no person may take, possess, buy, sell, or transport any wildlife — whether dead or alive, in whole or in part. Nor may any person take, possess, buy, sell, or transport any nests or eggs of wild birds except as so permitted. No person may take, possess, buy, sell, or transport any wildlife resources in violation of the regulations of the Wildlife Resources Commission. (1965, c. 957, s. 2; 1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective

Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-291.1. Manner of taking wild animals and wild birds.

(a) Except as otherwise provided, game may only be taken between a half hour before sunrise and a half hour after sunset and only by one or a combination of the following methods:

- (1) With a rifle.
- (2) With a shotgun not larger than number 10 gauge.
- (3) With a bow and arrow of a type prescribed in the regulations of the Wildlife Resources Commission.
- (4) With the use of dogs.
- (5) By means of falconry.

Fur-bearing animals may be taken at any time during open trapping season with traps authorized under G.S. 113-291.6, and rabbits may be box-trapped in accordance with regulations of the Wildlife Resources Commission. Nongame animals and birds open to hunting may be taken during the hours authorized by regulation during any open season by the methods for taking game. Use of pistols in taking wildlife is governed by subsection (g). The Wildlife Resources Commission may prescribe the manner of taking wild animals and wild birds on game lands and public hunting grounds.

(b) No wild animals or wild birds may be taken:

- (1) From or with the use of any vehicle; vessel, other than one manually propelled; airplane; or other conveyance except that the use of vehicles and vessels is authorized:

- a. As hunting stands, subject to the following limitations. No wild animal or wild bird may be taken from any vessel under sail, under power, or with the engine running or while still in motion from such propulsion. No wild animal or wild bird may be taken from any vehicle if it is in motion, the engine is running, or the passenger area of the vehicle is occupied. The prohibition of occupying the passenger area of a vehicle does not apply to a disabled individual whose mobility is restricted.

- b. For transportation incidental to the taking.

- (2) With the use or aid of any artificial light, net, trap, snare, electronic or recorded animal or bird call, or fire, except as may be otherwise provided by statute. No wild birds may be taken with the use or aid of salt, grain, fruit, or other bait, except as may be otherwise provided by statute. The taking of wild animals and wild birds with poisons, drugs, explosives, and electricity is governed by G.S. 113-261, 113-262, and Article 22A.

(c) It is a misdemeanor punishable in the discretion of the court for any person taking wildlife to have in his possession any:

- (1) Firearm equipped with a silencer or any device designed to silence, muffle, or minimize the report of the firearm. The firearm is considered equipped with the silencer or device whether it is attached to the firearm or separate but reasonably accessible for attachment during the taking of the wildlife.

- (2) Weapon of mass death and destruction as defined in G.S. 14-288.8.

The Wildlife Resources Commission may prohibit individuals training dogs or taking particular species from carrying axes, saws, tree-climbing equipment, and other implements that may facilitate the unlawful taking of wildlife, except tree-climbing equipment may be carried and used by persons lawfully taking raccoons and opossums during open season.

(d) In accordance with governing regulations of the Wildlife Resources Commission imposing further restrictions that may be necessary, hunters may conduct field trials with dogs in areas and at times authorized with the use of approved weapons and ammunition. The Wildlife Resources Commission may authorize organized retriever field trials, utilizing domestically raised pheasants or waterfowl, to be held under its permit.

(d1) Except in areas closed to protect sensitive wildlife populations, hunters may train dogs during the closed season:

(1) With the use of approved weapons and ammunition; and

(2) If reasonable control is exercised to prevent the dogs from running unsupervised at large and from killing wild animals and wild birds.

(e) Raccoons and opossum may be taken at night with dogs during seasons set by regulations of the Wildlife Resources Commission with the use of artificial lights of a type designed or commonly used to aid in taking raccoon and opossum. No conveyance may be used in taking any raccoon or opossum at night, but incidental transportation of hunters and dogs to and from the site of hunting is permitted. The Wildlife Resources Commission may by regulation prescribe restrictions respecting the taking of frogs, or other creatures not classified as wildlife which may be found in areas frequented by game, with the use of an artificial light, and may regulate the shining of lights at night in areas frequented by deer as provided in subsection (e1).

(e1) After hearing sufficient evidence and finding as a fact that an area frequented by deer is subject to substantial unlawful night deer hunting or that residents in the area have been greatly inconvenienced by persons shining lights on deer, the Wildlife Resources Commission may by regulation prohibit the intentional sweeping of that area with lights, or the intentional shining of lights on deer, from 11:00 p.m. until one-half hour before sunrise. Before adopting this regulation, the Wildlife Resources Commission must propose it at a public hearing in the area to be closed and seek the reactions of the local inhabitants. The regulation must exempt necessary shining of lights by landholders, motorists engaged in normal travel on the highway, and campers and others legitimately in the area, who are not attempting to attract wildlife. This subsection does not limit the right of hunters to take raccoon and opossum with dogs lawfully at night with a light under the terms of subsection (e).

(f) To keep North Carolina provisions respecting migratory birds in substantial conformity with applicable federal law and regulations, the Wildlife Resources Commission may by regulation expand or modify provisions of this Article if necessary to achieve such conformity. In particular, the commission may prohibit the use of rifles, unplugged shotguns, live decoys, and sinkboxes in the taking of migratory game birds; vary shooting hours; adopt specific distances, not less than 300 yards, hunters must maintain from areas that have been baited, and fix the number of days afterwards during which it is still unlawful to take migratory game birds in the area; and adopt similar provisions with regard to the use of live decoys.

(g) If a season is open permitting such method of taking for the species in question, a hunter may take rabbits, squirrels, opossum, raccoons, fur-bearing animals, and nongame animals and birds open to hunting with a pistol of .22 caliber with a barrel not less than six inches in length and loaded with long-rifle ammunition. In addition, a hunter or trapper lawfully taking a wild animal or wild bird by another lawful method may use a knife, pistol, or other swift method of killing the animal or bird taken. The Wildlife Resources Commission may, however, restrict or prohibit the carrying of firearms during special seasons or in special areas reserved for the taking of wildlife with primitive weapons or other restricted methods.

(h) In the interests of enhancing the enjoyment of sportsmen, and if consistent with conservation objectives, the Wildlife Resources Commission may by regulation relax requirements of this section on controlled shooting preserves and in other highly controlled situations.

(i) The intentional destruction or substantial impairment of wildlife nesting or breeding areas or other purposeful acts to render them unfit is unlawful. These prohibitions include cutting down den trees, shooting into nests of wild animals or birds, and despoliation of dens, nests, or rookeries.

(j) It is unlawful to take deer swimming or in water above the knees of the deer. (C.S., s. 2124; 1935, c. 486, s. 20; 1939, c. 235, s. 1; 1949, c. 1205, s. 3; 1955, c. 104; 1959, c. 207; c. 500; 1961, c. 1182; 1963, c. 381; c. 697, ss. 1, 3½; 1967, c. 858, s. 1; c. 1149, s. 1.5; 1969, c. 75; c. 140; 1971, c. 439, ss. 1-3; c. 899, s. 1; 1973, c. 1096; c. 1262, c. 18; 1975, c. 669; 1977, c. 493; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, ss. 4-6.)

Local Modification. — Alamance, Randolph, Rockingham, Rowan and Wilkes: 1981, c. 410.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that subsection (e1) of this section and the falconry provisions of this Subchapter are effective July 1, 1979.

Effect of Amendments. — The 1979, 2nd

Sess., amendment, effective July 1, 1980, added "and rabbits may be box-trapped in accordance with regulations of the Wildlife Resources Commission" at the end of the second sentence of subsection (a) and added the second sentence of subsection (c) and the last sentence of subsection (g).

§ 113-291.2. Seasons and bag limits on wild animals and birds; including animals and birds taken in bag; possession and transportation of wildlife after taking.

(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions. Unless modified by regulations of the Wildlife Resources Commission, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for migratory game birds in North Carolina must be followed, and a violation of the applicable federal regulations is hereby made unlawful.

(b) Any individual hunter or trapper who in taking a wild animal or bird has wounded or otherwise disabled it must make a reasonable effort to capture and kill the animal or bird. All animals and birds taken that can be retrieved must be retrieved and counted with respect to any applicable bag limits governing the individual taking the animal or bird.

(c) An individual who has lawfully taken game within applicable bag, possession, and season limits may, after the game is dead, possess and personally transport it for his own use by virtue of his hunting license, and without any additional permit, subject to tagging and reporting requirements that may apply to the fox and big game, as follows:

- (1) In an area in which the season is open for the species, the game may be possessed and transported without restriction.
- (2) The individual may possess and transport the game lawfully taken on a trip:
 - a. To his residence;
 - b. To a preservation or processing facility that keeps adequate records as prescribed in G.S. 113-291.3(b)(3) or a licensed taxidermist;

- c. From a place authorized in subparagraph b to his residence.
- (3) The individual may possess the game indefinitely at his residence, and may there accumulate lawfully-acquired game up to the the greater of:
 - a. The applicable possession limit for each species; or
 - b. One half of the applicable season limit for each species.

The above subdivisions apply to an individual hunter under 16 years of age covered by the license issued to his parent or guardian, if he is using that license, or by the license of an adult accompanying him. An individual who has lawfully taken game as a landholder without a license may possess and transport the dead game, taken within applicable bag, possession, and season limits, to his residence. He may indefinitely retain possession of such game, within aggregate possession limits for the species in question, in his residence.

(d) Except in the situations specifically provided for above, the Wildlife Resources Commission may by regulation impose reporting, permit, and tagging requirements that may be necessary upon persons:

- (1) Possessing dead wildlife taken in open season after the close of that season.
- (2) Transporting dead wildlife from an area having an open season to an area with a closed season.
- (3) Transporting dead wildlife lawfully taken in another state into this State.
- (4) Possessing dead wildlife after such transportation.

The Wildlife Resources Commission in its discretion may substitute written declarations to be filed with agents of the commission for permit and tagging requirements.

(e) Upon application of any landholder or agent of a landholder accompanied by a fee of fifty dollars (\$50.00), the Executive Director may require a survey of the deer population on the land of such landholder. If as a result of the survey it is determined that there is an overpopulation of deer in relation to the carrying capacity of the land, that the herd is substantially dependent on such land for its food and cover, and that the imbalance in the deer population is not readily correctable by an either-sex deer season of reasonable length, the Executive Director may issue to such landholder or agent a number of special antlerless deer tags that in the judgment of the Executive Director is sufficient to correct or alleviate the population imbalance. Subject to applicable hunting license requirements and bag, possession and season limits, the special deer tags may be used by any person or persons selected by the landholder or his agent as authority to take antlerless deer, including male deer with "buttons" or spikes not readily visible, on the tract of land concerned during such period of time as shall be prescribed by the Executive Director beginning after November 1 and ending no later than the close of the male deer season in the locality. Each antlerless deer killed shall be affixed immediately with a special antlerless deer tag in addition to the required big game tag, and shall be reported immediately in the wildlife cooperator tagging book supplied with the special antlerless deer tags. This tagging book and any unused tags shall be returned to the Commission within 15 days of the close of the season. Each such deer shall count as part of the daily bag, possession, and season limits of the person taking the deer. (1935, c. 486, ss. 16, 17; 1949, c. 1205, s. 1; 1973, c. 1262, s. 18; 1977, c. 499, s. 1; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 7; 1981, c. 681, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides that the falconry provisions of this Subchapter take effect July 1, 1979.

Effect of Amendments. — The 1979, 2nd

Sess., amendment, effective July 1, 1980, added the last sentence of subsection (a).

The 1981 amendment added subsection (e).

§ 113-291.3. Possession, sale, and transportation of wildlife.

(a) Live wildlife and the nests and eggs of wild birds may be taken, possessed, transported, bought, sold, imported, exported, or otherwise acquired or disposed of only as specifically authorized in this subchapter or its implementing regulations. The Wildlife Resources Commission may impose necessary reporting, permit, and tagging requirements in regulating activities involving live wildlife and the nests and eggs of wild birds. The Wildlife Resources Commission may charge a reasonable fee to defray the cost of any tagging procedure.

(b) With respect to dead wildlife:

- (1) Lawfully taken wildlife may be possessed and transported as provided in G.S. 113-291.2. Wildlife possessed under any dealer license may be possessed and transported in accordance with the provisions of law and regulations applicable to the license, and wildlife may be sold to qualified persons if authorized under provisions governing the license. In other situations, except as this subchapter may expressly provide, possession and transportation of wildlife may be regulated by the Wildlife Resources Commission.
- (2) Unless there is a specific restriction on the transfer of the species in question, an individual may accept the gift of wildlife lawfully taken within North Carolina if taking possession does not cause him to exceed applicable possession limits. If he notes and preserves in writing the name and address of the donor and under what license or exemption from license requirements the wildlife was taken, he may possess that wildlife without a permit in the places possession without a permit would be authorized in G.S. 113-291.2 had he taken the wildlife.
- (3) A licensed taxidermist or other licensed dealer taking temporary possession of wildlife of another may possess the wildlife that he is authorized to handle under his license in accordance with the regulations of the Wildlife Resources Commission. A person not a dealer operating a preservation or processing facility, whether commercially or not, may possess the wildlife owned by another without any permit or license if he ascertains that the wildlife was lawfully taken within the State and keeps a written record of:
 - a. The name and address of the owner of the wildlife and an adequate description of the wildlife left with him. If the description of the wildlife changes as the result of processing, the new description must be recorded.
 - b. The date, serial number, and type of the license under which the wildlife was taken or the applicable exemption from license requirements which the taker met.
 - c. The date all wildlife left with him is received and returned to the owner. If the receiving or returning of possession is to an agent or common carrier or otherwise occurs under circumstances in which permit requirements may apply, the type and date of the permit which authorizes the transaction must also be recorded.
- (4) The sale of rabbits and squirrels and their edible parts not for resale is permitted. If the Wildlife Resources Commission finds that affected game populations would not be endangered, it may authorize the sale of heads, antlers, horns, hides, skins, plumes, feet, and claws of one or more game animals or birds. In addition, it may authorize the sale of bobcats, opossums, and raccoons, and their parts, following their taking as game animals. No part of any bear or wild turkey may be sold under the above provisions, however, and no part of any fox taken

in North Carolina may be sold except as provided in G.S. 113-291.4. In regulating sales, the Wildlife Resources Commission may impose necessary permit requirements.

- (5) Lawfully taken fur-bearing animals and their parts, including furs and pelts, may, subject to any tagging and reporting requirements, be possessed, transported, bought, sold, given or received as a gift, or otherwise disposed of without restriction. The Wildlife Resources Commission may regulate the importation of wildlife from without the State by fur dealers, and may regulate the sale of fox fur and other wildlife hides taken within the State if sale of them is authorized. Fox furs lawfully taken without the State may be imported, possessed, transported, bought, sold, and exported in accordance with reasonable regulations of the Wildlife Resources Commission. Processed furs acquired through lawful channels within or without the State by persons other than fur dealers are not subject to regulation.
- (6) Nongame animals and birds open to hunting and nongame fish lawfully taken, except as this subchapter and its implementing regulations expressly provide otherwise, may be possessed, transported, bought, sold, given or received as a gift, or otherwise disposed of without restriction.
- (7) The possession and disposition of wild animals and wild birds killed accidentally or to prevent or halt depredations to property are governed by G.S. 113-274(c)(1a).

(c) The Wildlife Resources Commission may make reasonable regulations governing the marking of packages, crates, and other containers in which wildlife may be shipped.

(d) Any person hiring a hunter or trapper to take game is deemed to be buying game. Any hunter or trapper who may be hired is deemed to be selling game. (1935, c. 486, ss. 19, 22; 1941, c. 231, s. 1; 1973, c. 1262, s. 18; 1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 8.)

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, substituted "G.S. 113-274(c)(1a)" for "G.S. 113-274(1a)" at the end of subdivision (7) of subsection (b).

§ 113-291.4. Regulation of foxes; study of fox and fur-bearer populations.

(a) All of the regulatory powers granted the Wildlife Resources Commission generally with respect to game, wild animals, and wildlife apply to foxes unless there are specific overriding restrictions in this section.

(b) Except for any closed season under subsection (h), foxes may be taken with dogs both night and day on a year-round basis.

(c) Foxes may not be taken with firearms except:

(1) As provided in subsection (f).

(2) As an incidental method of humanely killing them following any lawful method of taking that does not result in death.

(3) When they are lawfully shot under laws and regulations pertaining to the destruction of animals committing depredations to property.

(d) Foxes may not be taken with the aid of any electronic calling device.

(e) The Wildlife Resources Commission is directed to improve its capabilities for studying fox and fur-bearer populations generally and, on the basis of its present knowledge and future studies, to implement management methods and impose controls designed to produce optimum fox and fur-bearer populations in the various areas of the State.

(f) If, on the basis of its studies and other information available, the Wildlife Resources Commission determines the population of foxes in an area is fully adequate to support a harvesting of that population, the Wildlife Resources Commission may, upon passage of local legislation permitting same, open a season for taking foxes by trapping. When the season is open for trapping, foxes may also be taken by the use of methods lawful for taking game animals, including the use of firearms. Any bag, possession, or season limits imposed on foxes taken from the area in question will apply in the aggregate to all foxes killed without regard to the method of taking.

(g) The Wildlife Resources Commission may provide for the sale of foxes lawfully taken in areas of open season as provided in subsection (f), under a system providing strict controls. These controls must include the tagging of foxes as required below and a system of permits to restrict those who may deal in foxes to dealers who meet high standards of integrity, reliability in keeping records and inventory, and promptness in submitting reports. The Wildlife Resources Commission must implement a system of tagging foxes and fox furs with a special fox tag, and the commission may charge two dollars and twenty-five cents (\$2.25) for each tag furnished to hunters, trappers, and fur dealers. The fox tag or tags must be procured before taking foxes by any method designed to kill foxes or when the intent is to harvest foxes. The number of tags furnished to any individual may be limited as to area and as to number in accordance with area, bag, possession, or season limits that may be imposed on foxes. No person may continue to hunt or trap foxes under this fox harvesting provision unless he still has at least one valid unused fox tag lawful for use in the area in question. A person hunting foxes with dogs not intending to kill them need not have any fox tag, but any fox accidentally killed by that hunter must be disposed of without sale as provided below, and no foxes not tagged may be sold. The Wildlife Resources Commission may by regulation provide reporting and controlled-disposition requirements, not including sale, of foxes killed accidentally by dog hunters, motor vehicles, and in other situations; it may also impose strict controls on the disposition of foxes taken by owners of property under the laws and regulations relating to depredations, and authorize sale under controlled conditions of foxes taken under depredation permits.

(h) In any area of the State in which the Wildlife Resources Commission determines that hunting of foxes with dogs has an appreciably harmful effect upon turkey restoration projects, it may declare a closed season for an appropriate length of time upon the taking with dogs of all species of wild animals and birds. Except as otherwise provided in G.S. 113-291.1(d) or (d1), this subsection does not prohibit lawful field trials or the training of dogs. (1979, c. 830, s. 1.)

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "Immediately upon ratification [June 7, 1979] the commission may expend funds available to it to initiate the studies of fox and fur-bearer populations mandated by G.S. 113-291.4(e)."

§ 113-291.5. Regulation of dogs used in hunting; limitations on authority of Wildlife Resources Commission; control of dogs on game lands; control of dogs chasing deer; other restrictions.

(a) Except as provided in G.S. 113-291.4, in the area described below, the Wildlife Resources Commission may regulate the use of dogs taking wildlife with respect to seasons, times, and places of use. The area covered by this subsection is that part of the State in and west of the following counties or parts of counties: Rockingham; Guilford; that part of Alamance and Orange lying south of Interstate Highway 85; Chatham; that part of Wake lying south of

N.C. Highway 98; Lee; Randolph; Montgomery; Stanly; Union; and that part of Anson lying west of N.C. Highway 742.

(b) In the area of the State lying east of that described in subsection (a), the Wildlife Resources Commission may not restrict or prohibit the use of dogs in hunting or the training of dogs, in season or out, except during the breeding and raising seasons for game during the period April 15 through June 15.

(c) On game lands, wildlife refuges, and public hunting grounds the Wildlife Resources Commission may regulate the possession and use of dogs and may impound dogs found running at large without supervision or, if unsupervised, without means of identification.

(d) The Wildlife Resources Commission may not by its regulations anywhere in the State restrict the number of dogs used in hunting or require that any particular breed of dog be used in hunting.

(e) It is unlawful to allow dogs not under the control of the owner or the individual in possession of the dogs to run or chase deer during the closed deer season.

(f) Nothing in this section is intended to require the leashing or confining of pet dogs. (1979, c. 830, s. 1.)

§ 113-291.6. Regulation of trapping.

(a) No one may take wild animals by trapping upon the land of another without having in his possession written permission issued and dated within the previous year by the owner of the land or his agent. This subsection does not apply to public lands on which trapping is not specifically prohibited, including tidelands, marshlands, and any other untitled land.

(b) No one may take wild animals by trapping with any steel-jaw, leghold, or connibear trap unless it:

- (1) Has a jaw spread of not more than seven and one-half inches.
- (2) Is horizontally offset with closed jaw spread of at least three sixteenths of an inch for a trap with a jaw spread of more than five and one-half inches. This subdivision does not apply if the trap is set in the water with quick-drown type of set.
- (3) Is smooth edged and without teeth or spikes.
- (4) Has a weather-resistant permanent tag attached legibly giving the trapper's name and address.

A steel-jaw or leghold trap set on dry land with solid anchor may not have a trap chain longer than eight inches from trap to anchor unless fitted with a shock-absorbing device approved by the Wildlife Resources Commission.

(c) No person may set or otherwise use a trap so that animals or birds when caught will be suspended. No hook of any type may be used to take wild animals or wild birds by trapping.

(d) Trap number 330 of the connibear type or size may only be set in the water and in areas in which beaver and otter may be lawfully trapped. For the purposes of this section:

- (1) A water-set trap is one totally covered by water with the anchor secured in water deep enough to drown the animal trapped quickly.
- (2) In areas of tidal waters, the mean high water is considered covering water.
- (3) In reservoir areas, covering water is the low water level prevailing during the preceding 24 hours.
- (4) Marshland, as defined in G.S. 113-229(n)(3), is not considered dry land.

(e) With respect to any lawfully placed trap of another set in compliance with the provisions of this section, no one without the express permission of the trapper may:

- (1) Remove or disturb any trap; or

(2) Remove any fur-bearing animal from the trap.

This subsection does not apply to wildlife protectors or other law-enforcement officers acting in the performance of their duties.

(f) Nothing in this section prohibits the use of steel- or metal-jaw traps by county or State public health officials or their agents to control the spread of disease when the use of these traps has been declared necessary by the Department of Human Resources.

(g) The Wildlife Resources Commission must include the trapping requirements of this section in its annual digest of hunting and trapping regulations provided to each person upon purchase of a license. (1977, c. 933, ss. 2, 7; 1979, c. 830, s. 1; 1981, c. 729.)

Local Modification. — Camden: 1981, c. 436.

Effect of Amendments. — The 1981 amendment substituted "A steel-jaw or leghold trap" for "If," deleted "a trap" following "solid

anchor" and deleted "and in no event may a trap chain exceed two feet in length" following "Commission," all in the last sentence of subsection (b).

§ 113-291.7. Regulation of bears; limited retention of local acts closing bear seasons.

Local acts closing the season on bears are exempted from the provisions of G.S. 113-133.1(b) until July 1, 1981. After that date any local acts setting a year-round closed season on bears which have not by their terms expired are temporarily retained until the Wildlife Resources Commission supersedes them by adopting regulations either opening a season in the county affected or carrying forward the closed-season provision. (1979, c. 830, s. 1.)

§ 113-292. Authority of the Wildlife Resources Commission in regulation of inland fishing and the introduction of exotic species.

(a) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all fishing in inland fishing waters, and the taking of inland game fish in coastal fishing waters, with respect to:

(1) Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish;

(2) Seasons for taking fish;

(3) Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

(b) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict:

(1) The opening and closing of inland fishing waters, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Wildlife Resources Commission; and

(2) The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all inland fisheries resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Wildlife Resources Commission in carrying out its duties.

To the extent not in conflict with provisions enforced by the Department, the Wildlife Resources Commission may exercise the powers conferred in this subsection in coastal fishing waters pursuant to its regulation of inland game fish in such waters.

(c) The Wildlife Resources Commission is authorized to make such regulations pertaining to the acquisition, disposition, transportation, and possession of fish in connection with private ponds as may be necessary in carrying out the provisions of this Subchapter and the overall objectives of the conservation of wildlife resources.

(d) The Wildlife Resources Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict anywhere in the State the acquisition, importation, possession, transportation, disposition, or release into public or private waters or the environment of exotic zoological or botanical species or specimens that may create a danger to or an imbalance in the environment inimical to the conservation of wildlife resources. This subsection is not intended to give the Wildlife Resources Commission the authority to supplant, enact any conflicting regulations, or otherwise take any action inconsistent with that of any other State agency acting within its jurisdiction. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§ 113-293. Obstructing rivers or creeks; keeping open fishways in dams.

(a), (b) Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

(c) It is unlawful for any person in inland fishing waters:

- (1) To set a net of any description across the main channel of any river or creek;
- (2) To erect so as to extend more than three fourths of the distance across any river or creek any stand, dam, weir, hedge, or other obstruction to the passage of fish;
- (3) To erect any stand, dam, weir, or hedge in any part of a river or creek required to be left open for the passage of fish; or,
- (4) Having erected any dam where the same was allowed, to fail to make and keep open such slope or fishway as may be required by law to be kept open for the free passage of fish.

The provisions of this section may not be construed to conflict in any way with the laws and regulations of any other agency with jurisdiction over the activity or subject matter in question. (Code, ss. 3387-3389; Rev., s. 2457; 1909, c. 466, s. 1; 1915, c. 84, s. 21; 1917, c. 290, s. 7; C. S., ss. 1878, 1974; 1925, c. 168, s. 2; 1935, c. 35; 1945, c. 776; 1951, c. 1045, s. 1; 1953, cc. 774, 1251; 1963, c. 1097, s. 1; 1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1979, c. 830, s. 1.)

§ 113-294. Specific violations.

(a) Any person who unlawfully sells, possesses for sale, or buys any wildlife is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both.

(b) Any person who unlawfully sells, possesses for sale, or buys any bear, cougar (*Felis concolor*), deer, or wild turkey is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion.

(c) Any person who unlawfully takes, possesses, or transports any bear, cougar (*Felis concolor*), or wild turkey is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion.

(d) Any person who unlawfully takes, possesses, or transports any antlerless deer is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than one hundred dollars (\$100.00) in addition to such other punishment the court may impose in its discretion.

(e) Any person who unlawfully takes deer between a half hour after sunset and a half hour before sunrise with the aid of an artificial light is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion.

(f) Any person who unlawfully takes, possesses, transports, sells, or buys any beaver, or violates any regulation of the Wildlife Resources Commission adopted to protect beavers, is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(g) Any person who unlawfully takes wild animals or birds from or with the use of a vessel equipped with a motor or with motor attached is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00), imprisonment not to exceed 90 days, or both.

(h) Any person who wilfully makes any false or misleading statement in order to secure for himself or another any license, permit, privilege, exemption, or other benefit under this Subchapter to which he or the person in question is not entitled is guilty of a misdemeanor punishable in the discretion of the court.

(i) Any person who violates any provision of G.S. 113-291.6, regulating trapping, is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(j) Any person who takes any fox by unlawful trapping or with the aid of any electronic calling device is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00), imprisonment not to exceed 90 days, or both.

(k) Any person who has been convicted of one of the fox offenses listed below who subsequently commits the same or another one of the fox offenses listed below is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted of a second or subsequent fox offense under this subsection is punishable by a fine of not less than two hundred fifty dollars (\$250.00) in addition to such other punishment the court may impose in its discretion. The fox offenses covered by this subsection are unlawfully selling, possessing for sale, or buying a fox; taking a fox by unlawful trapping; or unlawfully taking a fox with the aid of any electronic calling device. (1935, c. 486, s. 25; 1939, c. 235, s. 2; c. 269; 1941, c. 231, s. 2; c. 288; 1945, c. 635; 1949, c. 1205, s. 4; 1953, c. 1141; 1963, c. 147; c. 697, ss. 2, 3 ½; 1965, c. 616; 1967, c. 729; c. 1149, s. 1; 1971, c. 423, s. 1; c. 524; c. 899, s. 2; 1973, c. 677; 1975, c. 216; 1977, c. 705, s. 4; c. 794, s. 2; c. 933, s. 8; 1979, c. 830, s. 1.)

§§ 113-295 to 113-300: Reserved for future codification purposes.

ARTICLE 22A.

Use of Poisons and Pesticides.

§ 113-300.1. Use of poisons and pesticides in general.

No one may take any wild animal or bird with the use of any poison or pesticide except as provided in this Article. The taking of fish by the use of poison is governed by G.S. 113-261 and G.S. 113-262, and the prohibitions of those sections against the taking of wildlife by poison apply unless specifically permitted under this Article. Otherwise, the Wildlife Resources Commission may, by regulations consistent with the North Carolina Pesticide Law of 1971 and the Structural Pest Control Act of 1955, regulate, prohibit, or restrict the use of poisons or pesticides upon or severely affecting wildlife resources. (1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 9.)

Editor's Note. — This Article is set out as enacted by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a

more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, deleted "the" preceding "wildlife" in the second sentence.

§ 113-300.2. Declaring wild animal or bird a pest; concurrence of Wildlife Resources Commission required before poison or pesticide may be used.

(a) When there is a factual basis for the declaration, any wild animal or bird may be declared a pest by:

- (1) The Commissioner of Agriculture under the Structural Pest Control Act of North Carolina of 1955, as amended, in Article 4C of Chapter 106 of the General Statutes, in accordance with any regulations or restrictions imposed by the Structural Pest Control Committee; or
- (2) The Pesticide Board under the North Carolina Pesticide Law of 1971, as amended, in Article 52 of Chapter 143 of the General Statutes.

(b) When a wild animal or bird is declared a pest, the Commissioner of Agriculture or the Pesticide Board, as the case may be, must notify the Wildlife Resources Commission in writing of the action taken; the areas in which the declaration is effective; the type, amount, and mode of application of any poison or pesticide proposed for use against the pest; and other information pertinent to the declaration.

(c) Upon receiving notification under subsection (b), the Wildlife Resources Commission may:

- (1) Hold a timely public hearing on the question whether it should concur in the declaration that the wild animal or bird is a pest and should be open to taking with the type or types of poison or pesticide specified or authorized in the notice, in the areas and under the circumstances specified. After holding the public hearing the Wildlife Resources Commission must decide, within 60 days after receiving the notice under subsection (b), whether it concurs or refuses to concur in the declaration that the wild animal or bird is a pest.

- (2) Take no action. In this event, 60 days after the Wildlife Resources Commission receives notice of the declaration under subsection (b), the concurrence of the Wildlife Resources Commission will occur automatically.

(d) Upon the concurrence of the Wildlife Resources Commission in the declaration under subsection (b), the wild animal or bird may be taken with the use of any poison or pesticide specified in the notice in accordance with applicable restrictions in statutes and regulations and in accordance with any special restrictions imposed by the Commissioner of Agriculture, the Structural Pest Control Committee, or the Pesticide Board. If the Wildlife Resources Commission refuses to concur, no poison or pesticide may be used to take the wild animal or bird.

(e) After holding a public hearing on the subject, the Wildlife Resources Commission may rescind its concurrence to a declaration under subsection (b) or grant its concurrence previously withheld.

(f) With the approval of the Structural Pest Control Committee or the Pesticide Board, as the case may be, the Wildlife Resources Commission may grant a qualified concurrence to a declaration, imposing further restrictions as to the use of poison or pesticide in taking the wild animal or bird in question. (1979, c. 830, s. 1.)

§ 113-300.3. Penalties for violations of Article; repeated offenses.

(a) Each day in which poisons or pesticides are used unlawfully in taking wild animals or birds constitutes a separate offense.

(b) Any taking of a wild animal or bird in wilful violation of this Article or in wilful violation of any restrictions imposed by the Commissioner of Agriculture, the Structural Pest Control Committee, the Pesticide Board, or the Wildlife Resources Commission is punishable under G.S. 113-262(a). For the purposes of prosecutions under that subsection, the term "poison" includes pesticides.

(c) Any person taking a wild animal or bird declared a pest with the use of poison or pesticide who neglects to observe applicable restrictions imposed by the Commissioner of Agriculture, the Structural Pest Control Committee, the Pesticide Board, or the Wildlife Resources Commission is guilty of a misdemeanor. Unless a greater penalty is prescribed for the offense in question, any person convicted under this subsection is punishable by a fine or not more than one hundred dollars (\$100.00), imprisonment not to exceed 30 days, or both. (1979, c. 830, s. 1.)

ARTICLE 23.

Administrative Provisions; Regulatory Authority of Wildlife Resources Commission.

§ 113-301: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons

exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termina-

tion of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the

conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§ 113-301.1. Wildlife Resources Commission obligated to make efforts to notify members of the public who may be affected by operative provisions of statutes and regulations; filing of new and amended regulations.

(a) The Wildlife Resources Commission must prepare and distribute to license agents informational materials relating to hunting, fishing, trapping, and boating laws and regulations administered by the Wildlife Resources Commission. The materials furnished an agent should be appropriate to the types of licenses he customarily handles, and in a quantity reasonably anticipated to be sufficient to meet the needs of licensees obtaining licenses from the agent.

(b) In issuing new licenses and permits from the Raleigh office by mail, the Wildlife Resources Commission must generally inform the licensee or permittee of governing provisions of law and regulations applicable to the type of license or permit secured. In issuing renewal licenses and permits by mail, the Wildlife Resources Commission must inform the licensee or permittee of any substantial changes in the law or regulations which may affect the activities of the licensee or permittee.

(c) After adopting regulations which impose new restrictions upon the activities of members of the public who do not normally hold licenses or permits to engage in the activity in question, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions. These steps may include press releases to the media, informing local authorities, and other forms of communication that give promise of reaching the segment of the public affected.

(d) After adopting new restrictions on hunting, fishing, trapping, or boating at a time other than when usual annual changes in the regulations affecting those activities are adopted, the Wildlife Resources Commission must take appropriate steps to publicize the new restrictions in a manner designed to reach persons who may be affected.

(e) Pending full implementation by the Attorney General of the publication requirements of Article 5 of Chapter 150A of the General Statutes, the Wildlife Resources Commission may in its discretion continue to file with the clerks of superior court of all counties affected the text of any new regulation or amending or rewritten regulation. (1979, c. 830, s. 1; 1979, 2nd Sess., c. 1285, s. 10.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective

Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

Effect of Amendments. — The 1979, 2nd Sess., amendment, effective July 1, 1980, added subsection (e).

§ 113-302. Prima facie evidence provisions.

(a) Except as provided below, possession of game or game fish in any hotel, restaurant, cafe, market, or store, or by any produce dealer, constitutes prima facie evidence of possession for the purpose of sale. This subsection does not apply to:

- (1) Possession of propagated game birds or hatchery-reared trout that is in accordance with licensing requirements and wrapping or tagging provisions that may apply; or
- (2) Game or game fish brought in by patrons in accordance with G.S. 113-276(i).

(b) The flashing or display of any artificial light between a half hour after sunset and a half hour before sunrise in any area which is frequented or inhabited by wild deer by any person who has accessible to him a firearm, crossbow, or other bow and arrow constitutes prima facie evidence of taking deer with the aid of an artificial light. This subsection does not apply to the headlights of any vehicle driven normally along any highway or other public or private roadway. (1965, c. 957, s. 2; 1979, c. 830, s. 1.)

§ 113-302.1. Inspection of licensed or commercial premises; authority to secure inspection warrants.

(a) Protectors are authorized to enter and make a reasonable inspection at an appropriate time of day of any premises in which a person subject to administrative control under G.S. 113-276.2 conducts his operations to determine whether any wildlife on the premises is possessed in accordance with applicable laws and regulations, required records are being kept, and other legal requirements are being observed. It is an appropriate time of day for inspection if the establishment is open for business or if a proprietor or employee is on the premises.

(b) In cases not controlled by subsection (a), protectors who believe that wildlife may be on the premises of any public refrigeration storage plant, meat shop, store, produce market, hotel, restaurant, or other public food-storage or eating place may request permission to enter the nonpublic areas of the premises to make a reasonable inspection to determine whether any wildlife on the premises is possessed in accordance with applicable laws and regulations. If the person in charge of the premises refuses the inspection request of a protector, he is authorized to procure and execute an administrative search warrant issued under the terms of Article 4A of Chapter 15 of the General Statutes or under any successor legislation.

(c) In cases controlled by subsection (a), an administrative search warrant may be secured in the protector's discretion or if case law requires it. Nothing in this section is intended to prevent a lawful search of premises, with or without a search warrant under Chapter 15A of the General Statutes, when the circumstances so justify. (1979, c. 830, s. 1.)

§ 113-303. Arrest, service of process and witness fees of protectors.

All arrest fees and other fees that may be charged in any bill of costs for service of process by protectors must be paid to the county in which the trial is held. No witness fee may be taxed in any bill of costs by virtue of the

appearance of a protector as a witness in a criminal case within his enforcement jurisdiction. Acceptance by any protector of any arrest fee, witness fee, or any other fee to which he is not entitled is a misdemeanor punishable in the discretion of the court. (1965, c. 957, s. 2.)

§ 113-304. Reciprocal agreements by Wildlife Resources Commission.

The Wildlife Resources Commission is empowered to make reciprocal agreements with other jurisdictions respecting the matters governed in this Subchapter. Pursuant to such agreements the Wildlife Resources Commission may by regulation modify provisions of this Subchapter in order to effectuate the purposes of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-305. Cooperative agreements by Wildlife Resources Commission.

The Wildlife Resources Commission is empowered to enter into cooperative agreements with public and private agencies and individuals respecting the matters governed in this Subchapter. Pursuant to such agreements the Wildlife Resources Commission may expend funds, assign employees to additional duties within or without the State, assume additional responsibilities, and take other actions that may be required by virtue of such agreements, in the overall best interests of the conservation of wildlife resources. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-306. Administrative authority of Wildlife Resources Commission; disposition of license funds; delegation of powers; injunctive relief.

(a) In the overall best interests of the conservation of wildlife resources, the Wildlife Resources Commission may lease or purchase lands, equipment, and other property; accept gifts and grants on behalf of the State; establish wildlife refuges, management areas, and boating and fishing access areas, either alone or in cooperation with others; provide matching funds for entering into projects with some other governmental agency or with some scientific, educational, or charitable foundation or institution; condemn lands in accordance with the provisions of Chapter 40 of the General Statutes and other governing provisions of law; and sell, lease, or give away property acquired by it. Provided, that any private person selected to receive gifts or benefits by the Wildlife Resources Commission be selected:

- (1) With regard to the overall public interest that may result; and
- (2) From a defined class upon such a rational basis open to all within the class as to prevent constitutional infirmity with respect to requirements of equal protection of the laws or prohibitions against granting exclusive privileges or emoluments.

(b) Except as otherwise specifically provided by law, all money credited to, held by, or to be received by the Wildlife Resources Commission from the sale of licenses authorized by this Subchapter must be consolidated and placed in the Wildlife Resources Fund.

(c) The Wildlife Resources Commission may, within the terms of policies set by regulation, delegate to the Executive Director all administrative powers granted to it.

(d) The Wildlife Resources Commission is hereby authorized and directed to develop a plan and policy of wildlife management for all lands owned by the

State of North Carolina which are suitable for this purpose. The Division of State Property and Construction of the Department of Administration shall determine which lands are suitable for the purpose of wildlife management. Nothing in the wildlife management plan shall prohibit, restrict, or require the change in use of State property which is presently being used or will in the future be used to carry out the goals and objectives of the State agency utilizing such land. Each plan of wildlife management developed by the Wildlife Resources Commission shall consider the question of public hunting; and whenever and wherever possible and consistent with the primary land use of the controlling agency, public hunting shall be allowed under cooperative agreement with the Wildlife Resources Commission. Any dispute over the question of public hunting shall be resolved by the Division of State Property and Construction.

(e) Subject to any policy directives adopted by the members of the Wildlife Resources Commission, the Executive Director in his discretion may institute an action in the name of the Wildlife Resources Commission in the appropriate court for injunctive relief to prevent irreparable injury to wildlife resources or to prevent or regulate any activity within the jurisdiction of the Wildlife Resources Commission which constitutes a public nuisance or presents a threat to public health or safety. (1965, c. 957, s. 2; 1973, c. 1262, s. 18; 1977, c. 759; 1979, c. 830, s. 1; 1981, c. 482, s. 3.)

Effect of Amendments. — The 1981 amendment inserted "Except as otherwise specifically provided by law" in subsection (b).

§ 113-307. Adoption of federal laws and regulations.

To the extent that the Wildlife Resources Commission is granted authority under this Chapter or under any other provision of law, including Chapter 75A of the General Statutes, over subject matter as to which there is concurrent federal jurisdiction, the Wildlife Resources Commission in its discretion may by reference in its regulations adopt relevant provisions of federal law and regulations as State regulations. To prevent confusion or conflict of jurisdiction in enforcement, the Wildlife Resources Commission may provide for an automatic incorporation by reference into its regulations of future changes within any particular set of federal laws or regulations relating to some subject clearly within the jurisdiction of the Wildlife Resources Commission. (1965, c. 957, s. 2; 1973, c. 1262, s. 18.)

§ 113-307.1. Legislative assent to specific federal acts.

(a) The consent of the General Assembly of North Carolina is hereby given to the making by the Congress of the United States, or under its authority, of all such rules and regulations as the federal government shall determine to be needful in respect to game animals, game and nongame birds, and fish on such lands in the western part of North Carolina as shall have been, or may hereafter be, purchased by the United States under the terms of the act of Congress of March 1, 1911, entitled "An act to enable any state to cooperate with any other state or states, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purposes of conserving the navigability of navigable rivers" (36 Stat. 961), and acts of Congress supplementary thereto and amendatory thereof, and in or on the waters thereon.

Nothing in this subsection shall be construed as conveying the ownership of wildlife from the State of North Carolina or permit the trapping, hunting, or

transportation of any game animals, game or nongame birds, or fish by any person, including any agency, department, or instrumentality of the United States or agents thereof, on the lands in North Carolina, as shall have been or may hereafter be purchased by the United States under the terms of any act of Congress, except in accordance with the provisions of this Subchapter and its implementing regulations. Provided, that the provisions of G.S. 113-39 apply with respect to licenses.

Any person, including employees or agents of any department or instrumentality of the United States, violating the provisions of this subsection is guilty of a misdemeanor punishable in the discretion of the court.

(b) The State of North Carolina hereby assents to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes", approved September 2, 1937 (Public Law 415, 75th Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of Agriculture thereunder; and no funds accruing to the State of North Carolina from license fees paid by hunters shall be diverted for any other purpose than the protection and propagation of game and wildlife in North Carolina and administration of the laws enacted for such purposes, which laws are and shall be administered by the Wildlife Resources Commission.

(c) Assent is hereby given to the provisions of the act of Congress entitled "An act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes", approved August 9, 1950 (Public Law 681, 81st Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be directed for any other purpose than the administration of the Wildlife Resources Commission and for the protection, propagation, preservation, and investigation of fish and wildlife.

(d) If as a precondition to receiving funds under any cooperative program there must be a separation of license revenues received from certain classes of licensees and utilization of such revenues for limited purposes, the Wildlife Resources Commission is directed to make such arrangements for separate accounting within the Wildlife Resources Fund, or for separate funding, as may be necessary to insure the use of the revenues for the required purposes and eligibility for the cooperative funds. This subsection applies whether the cooperative program is with a public or private agency and whether the Wildlife Resources Commission acts alone on behalf of the State or in conjunction with some State agency. (1915, c. 205; C. S., s. 2099; 1939, c. 79, ss. 1, 2; 1979, c. 830, s. 1.)

ARTICLE 23B.

Fishermen's Economic Development Program.

§§ 113-315.20 to 113-315.24: Reserved for future codification purposes.

ARTICLE 23C.

North Carolina Seafood Industrial Park Authority.

§ 113-315.25. Creation of Authority; membership; appointment; terms and vacancies; officers; meetings and quorum; compensation.

(a) There is hereby created the North Carolina Seafood Industrial Park Authority. It shall be governed by a board composed of 11 members to be appointed as follows. The Board is hereby designated as the Authority.

(b) Nine members shall be appointed by the Governor.

The initial appointments by the Governor shall be made on or after the date of ratification, four terms to expire July 1, 1981; four terms to expire July 1, 1983; and one term to expire July 1, 1985. Thereafter, at the expiration of each stipulated term of office all appointments shall be for a term of four years. The members of the Authority shall be selected as follows: one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of the village or town where the Seafood Industrial Park is located; one member be appointed to the Authority for a term to expire July 1, 1983, who is a resident of the county where the Seafood Industrial Park is located; two members be appointed to the Authority for terms which expire July 1, 1981, from the area of the State where the Seafood Industrial Park is located; five members (two terms expire July 1, 1981; two terms expire July 1, 1983; and one term expires July 1, 1985) be appointed to the Authority who are residents of the State at large and insofar as practicable shall represent all the other sections of the State. At the expiration of the terms for the representatives as stated above the Governor shall use his discretion on reappointments. However, there shall be no less than five members of the Authority from coastal counties and there should be at least one member on the Authority from each village or town in which the Seafood Parks are located. Any vacancy occurring in the membership of the Authority shall be filled by the appointing authority for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

(c) The President of the Senate shall appoint one Senator for a two-year term.

(d) The Speaker of the House shall appoint one Representative for a two-year term.

(e) The Governor shall annually appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority.

(f) No person shall serve on the Authority for more than two complete consecutive terms.

(g) The Authority shall meet once in each 90 days at such regular meeting time as the Authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority, who are

not members of the General Assembly, shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5 and G.S. 138-6. The members of the Authority who are members of the General Assembly shall not receive per diem but shall receive travel and subsistence at the rates set out in G.S. 120-3.1. (1979, c. 459, s. 1.)

Editor's Note. — Session Laws 1979, c. 459, s. 16, provides: "North Carolina Seafood Industrial Park Authority transfer. The North Carolina Seafood Industrial Park Authority, as

contained in this Article, will take title to, develop and manage seafood industrial parks which henceforth has been the responsibility of several State agencies."

§ 113-315.26. Personnel.

The Secretary of Commerce shall appoint such management personnel as deemed necessary who shall serve at the pleasure of the Secretary of Commerce. The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Secretary of Commerce shall have the power to appoint, employ and dismiss such number of employees as he may deem necessary to accomplish the purposes of this Article subject to the availability of funds. The power to appoint, employ and dismiss personnel, and to fix the number thereof, may be delegated to one or more of the management personnel upon such terms and subject to such restrictions and limitations as the Secretary of Commerce may deem proper. The compensation of such employees shall be fixed by the Secretary of Commerce. It is recommended that, to the fullest extent possible, the Secretary of Commerce consult with the Authority on matters of personnel. (1979, c. 459, s. 2.)

§ 113-315.27. Executive committee.

There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are specifically authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected. (1979, c. 459, s. 3.)

§ 113-315.28. Purposes of Authority.

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the seafood industrial parks within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation as such seafood industrial parks of watercraft and facilities thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes;

- (1) To develop and improve the Wanchese Seafood Industrial Park, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of seafood commerce from and to any place or places in the State of North Carolina and other states and foreign countries;
- (2) To acquire, construct, equip, maintain, develop and improve the port facilities at said parks and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government;

- (3) To foster and stimulate the shipment of seafood commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;
- (4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said seafood harbors;
- (5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority;
- (6) And in general to do and perform any act or function which may tend to be useful toward the development and improvement of seafood industrial parks of the State of North Carolina, and to increase the movement of waterborne seafood commerce, foreign and domestic, to, through, and from said seafood industrial parks.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the seafood possibilities of the State of North Carolina. (1979, c. 459, s. 4.)

§ 113-315.29. Powers of Authority.

In order to enable it to carry out the purposes of this Article, the said Authority shall:

- (1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;
- (2) Have the authority to make all necessary contracts and arrangements with other seafood industrial park or port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the seafood industries;
- (3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Article, all or any of them;
- (4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto;
- (5) Be authorized and empowered to pay all necessary costs and expenses involved and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Article;
- (6) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority

shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof;

- (7) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;
- (8) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;
- (9) Be authorized and empowered to do any and all other acts and things in this Article authorized or required to be done, whether or not included in the general powers in this section mentioned; and
- (10) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Article. (1979, c. 459, s. 5.)

§ 113-315.30. Approval of acquisition and disposition of real property.

Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Seafood Industrial Park Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "Seafood Industrial Park Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina Seafood Industrial Park Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1979, c. 459, s. 6.)

§ 113-315.31. Issuance of bonds.

(a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized at one time or from time to time to issue with the approval of the Advisory Budget Commission negotiable revenue bonds of the Authority. The principal and interest of revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) Such bonds and the income thereof shall be exempt from all taxation within the State.

(e) Notwithstanding any other provisions of this Article, the State Treasurer shall have the exclusive power to issue bonds and notes authorized under the act upon request of the Authority and with the approval of the Local Government Commission. The State Treasurer in his sole discretion shall determine the interest rates, maturities, and other terms and conditions of the bonds and notes authorized by this act. The North Carolina Seafood Industrial Park Authority shall determine when a bond issue is indicated. The Authority shall cooperate with the State Treasurer in structuring any bond issue in general, and also in soliciting proposals from financial consultants, underwriters, and bond attorneys. (1979, c. 459, s. 7.)

§ 113-315.32. Power of eminent domain.

For the acquiring of rights-of-way and property necessary for the construction of wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1979, c. 459, s. 8.)

§ 113-315.33. Exchange of property; removal of buildings, etc.

The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for seafood industrial park development, under the authorization of this Article. (1979, c. 459, s. 9.)

§ 113-315.34. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police.

(a) The jurisdiction of the Authority in any of said harbors or seaports within the State for the shipment of seafood commerce shall extend to all properties

owned by or under control of the Authority and shall also extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina Seafood Industrial Park Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The North Carolina Seafood Industrial Park Authority is hereby authorized to make such reasonable rules, regulations, and adopt such additional ordinances with respect to the use of the streets, alleys, driveways and to the establishment of parking areas on the properties of the Authority and relating to the safety and welfare of persons using the property of the Authority. All rules, regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Authority and printed and copy of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina and the Authority shall cause to be posted, at appropriate places on the properties of the Authority, notice to the public of applicable rules, regulations and ordinances as may be adopted under the authority of this subsection. Any person violating any such rules, regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not exceeding fifty dollars (\$50.00) or imprisonment not to exceed 30 days.

(d) The Secretary of Commerce is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have within the jurisdiction of the Authority all the powers of policemen of incorporated towns. Such policemen shall have the power of arrest of persons committing violations of State law or any rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11. (1979, c. 459, s. 10.)

§ 113-315.35. Annual audit; copies to be furnished.

At least once in each year the State Auditor shall cause to be made a detailed audit of all moneys received and disbursed by the Authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the Authority. A copy of the said audit shall be furnished to each member of the governing body of the said Authority and to the officers thereof and to the Governor and the Attorney General. (1979, c. 459, s. 11.)

§ 113-315.36. Purchase of supplies, material and equipment.

All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina Seafood Industrial Park Authority. (1979, c. 459, s. 12.)

§ 113-315.37. Liberal construction of Article.

It is intended that the provisions of this Article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1979, c. 459, s. 13.)

§ 113-315.38. Warehouses, wharves, etc., on property abutting navigable waters.

The powers, authority and jurisdiction granted to the North Carolina Seafood Industrial Park Authority under this Article and Chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1979, c. 459, s. 14.)

§ 113-315.39. Taxation.

The property of the Authority shall not be subject to any taxes or assessments thereon. (1979, c. 459, s. 15.)

ARTICLE 24.***Miscellaneous Transitional Provisions.*****§ 113-316. General statement of purpose and effect of revisions of Subchapter IV made in 1965 and 1979.**

To clarify the conservation laws of the State and the authority and jurisdiction of the Department of Natural Resources and Community Development and the North Carolina Wildlife Resources Commission: commercial fishing waters are renamed coastal fishing waters and the Department is given jurisdiction over and responsibility for the marine and estuarine resources in coastal fishing waters; the laws pertaining to commercial fishing operations and marine fishing and fisheries regulated by the Department are consolidated and revised generally and broadened to reflect the jurisdictional change respecting coastal fisheries; laws relating to the conservation of wildlife resources administered by the Wildlife Resources Commission are consolidated and revised; and the enforcement authority of marine fisheries inspectors and wildlife protectors is clarified, including the authority of wildlife protectors over boating and other activities other than conservation within the jurisdiction of the Wildlife Resources Commission. (1965, c. 957, s. 1; 1973, c. 1262, ss. 28, 86; 1977, c. 771, s. 4; 1979, c. 830, s. 1.)

Revision of Article. — This Article is set out as amended and revised by Session Laws 1979, c. 830, which extensively amended and revised Subchapter IV of this Chapter. The 1979 act is effective generally July 1, 1980; provisions as to annual licenses which expire July 31 are effective

Aug. 1, 1980; falconry provisions and subsection (e1) of § 113-291.1 are effective July 1, 1979. For a more detailed consideration of the 1979 act, see the note catchlined "Revision of Subchapter," immediately preceding Article 12 of this Chapter.

§ 113-317: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of

this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§§ 113-318 to 113-320: Repealed by Session Laws 1973, c. 1262, s. 28.

§§ 113-321, 113-322: Repealed by Session Laws 1979, c. 830, s. 1, effective July 1, 1980, and August 1, 1980.

Editor's Note. — Session Laws 1979, c. 830, s. 17, provides, in part: "The provisions of this act generally take effect July 1, 1980. Those provisions that specifically apply to annual licenses which expire on July 31 of each year take effect on August 1, 1980. Persons exercising rights under annual licenses renewable each January 1 on the effective date of this act, however, may continue to utilize those licenses until their expiration subject to the provisions of this act relating to restrictions upon and suspension, revocation, and termination of licenses. The North Carolina Wildlife Resources Commission may administratively provide for the continued use or the orderly replacement, or both, of permanent licenses and permits outstanding upon the effective date of

this act."

Session Laws 1979, c. 830, s. 2, provides: "The repeal of Article 6 and Subchapters IIA and III and of parts of Subchapter IV of Chapter 113 of the General Statutes and of all special, local, and private acts and ordinances regulating the conservation of wildlife resources is made subject to such temporary retention of local acts and former provisions of Chapter 113 of the General Statutes as may be specified in Subchapter IV. The repeal of acts which themselves repeal former acts is not intended to revive the former acts."

For repealed sections and local acts continued in effect as to particular counties, see § 113-133.1.

§§ 113-323 to 113-330: Reserved for future codification purposes.

ARTICLE 25.

[Reserved.]

§§ 113-331 to 113-377: Reserved for future codification purposes.

ARTICLE 26.

Marine Fisheries Compact and Commission.

§§ 113-377.1 to 113-377.7: Transferred to §§ 113-252 to 113-258 by Session Laws 1965, c. 957.

Chapter 113A.

Pollution Control and Environment.

Article 4.

Sedimentation Pollution Control Act of 1973.

Sec.

- 113A-54. Powers and duties of the Commission.
 113A-57. Mandatory standards for land-disturbing activity.
 113A-61. Approval of plans.

Article 6.

North Carolina Trails System.

- 113A-87. Authority to designate trails.

Article 7.

Coastal Area Management.

Part 1. Organization and Goals.

- 113A-103. Definitions.

Part 4. Permit Letting and Enforcement.

- 113A-118. Permit required.
 113A-121. Permits for minor developments under expedited procedures.
 113A-121.1. Review of grant or denial of permits.
 113A-122. Permits under quasi-judicial procedures.
 113A-125. Transitional provisions.

Article 7A.

Coastal Beach Access Program.

- 113A-134.1. Legislative findings.

Sec.

- 113A-134.2. Creation of program; administration; purpose.
 113A-134.3. Standards for beach access program.

Article 9.

Land Policy Act.

- 113A-153. North Carolina Land Policy Council.
 113A-154. [Repealed.]
 113A-157. [Repealed.]

Article 11.

Forest Development Act.

- 113A-183. Forest Development Fund.

Article 12.

Primary Forest Product Assessment Act.

- 113A-197 to 113A-201. [Reserved.]

Article 13.

Toxic Substances Task Force and Incident Response Procedures.

- 113A-202, 113A-203. [Repealed.]

ARTICLE 1.

Environmental Policy Act.

§ 113A-1. Title.

Editor's Note. —

Session Laws 1971, c. 1203, s. 12, as amended by Session Laws 1973, c. 119, s. 1, Session Laws 1977, c. 532, s. 1, and Session Laws 1981, c. 658, s. 1 provides: "This act shall become effective on October 1, 1971, and shall remain in effect until

September 1, 1991. No act or proceeding required or authorized under the act shall be initiated after September 1, 1991, but any such act or proceeding pending on said date shall be brought to its conclusion as if this act continued in effect."

§ 113A-3. Declaration of State environmental policy.

CASE NOTES

Quoted in *Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina*

Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 113A-4. Cooperation of agencies; reports; availability of information.

CASE NOTES

Quoted in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 113A-6. Conformity of administrative procedures to State environmental policy.

CASE NOTES

Stated in Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 113A-7. Other statutory obligations of agencies.

CASE NOTES

Relation Between Federal and State Law. — The North Carolina Board of Transportation would be acting within the North Carolina Environmental Protection Act if it were complying with either the State or federal environmental regulations or procedural requirements, and to the extent that the federal environmental law is relied upon to meet the requirements of the North Carolina Environmental Protection Act, the federal requirements are by reference enforceable against North Carolina agencies as state law. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

§ 113A-10. Provisions supplemental.

CASE NOTES

Relation Between Federal and State Law. — The North Carolina Board of Transportation would be acting within the North Carolina Environmental Protection Act if it were complying with either the State or federal environmental regulations or procedural requirements, and to the extent that the federal environmental law is relied upon to meet the requirements of the North Carolina Environmental Protection Act, the federal requirements are by reference enforceable against North Carolina agencies as state law. Orange County Sensible Hwys. & Protected Environments, Inc. v. North Carolina Dep't of Transp., 46 N.C. App. 350, 265 S.E.2d 890 (1980).

ARTICLE 3.

*Natural and Scenic Rivers System.***§ 113A-30. Short title.**

CASE NOTES

Declaratory Judgment Premature. — None of the plaintiffs seeking a declaratory judgment that Article 2 of Chapter 113 and Article 3 of Chapter 113A are unconstitutional and praying that defendants be permanently enjoined from adopting a "Master Plan" for the Eno River State Park had as yet been directly and adversely affected by the statutes they sought to challenge, and the plaintiffs failed to show the existence of a genuine controversy cognizable under the Declaratory Judgment

Act, where no condemnation proceeding affecting any lands of the plaintiffs had as yet been instituted, and all that had occurred was that employees of the Division of Parks and Recreation had made initial alternative planning proposals for a State park which contemplated ultimate acquisition of certain lands of the plaintiffs for park purposes. *Barbour v. Little*, 37 N.C. App. 686, 247 S.E.2d 252, cert. denied, 295 N.C. 733, 248 S.E.2d 862 (1978).

§ 113A-35.1. Components of system; management plan; acquisition of land and easements; inclusion in national system.

Legal Periodicals. — For a note entitled, "The Conflict Over the New River, and the Test Case for the Wild and Scenic Rivers Act: North

Carolina v. FPC," see 9 N.C. Cent. L.J. 192 (1978).

ARTICLE 4.

*Sedimentation Pollution Control Act of 1973.***Repeal of Article.** —

Session Laws 1981, c. 247, s. 1, amended § 143-34.12 (codified from Session Laws 1977, c. 712, s. 3, as amended) so as to eliminate the

provision repealing this Article. Section 143-34.12 was itself repealed by Session Laws 1981, c. 932, s. 1.

§ 113A-50. Short title.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Cited in *Food Town Stores, Inc. v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

§ 113A-51. Preamble.

CASE NOTES

Application to Activities Occurring Prior to Effective Date of Article. — Application of the Sedimentation Pollution Control Act of 1973 to prevent erosion and sedimentation of public waters resulting from "land-disturbing" activities which occurred before the statute became effective does not constitute an

unlawful retroactive application of the statute since the purpose of the statute is to control erosion and sedimentation rather than only land-disturbing activities. State ex rel. Lee v. Penland-Bailey Co., 50 N.C. App. 498, — S.E.2d — (1981).

§ 113A-54. Powers and duties of the Commission.

(b) The Commission shall develop and adopt and shall revise as necessary from time to time, rules and regulations for the control of erosion and sedimentation resulting from land-disturbing activities. The Commission shall adopt or revise its rules and regulations in accordance with the rulemaking procedures set forth in Article 2 of Chapter 150A of the General Statutes.

- (1) Notice of any hearing shall be given not less than 60 days before the date of the hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action that the Commission proposes to take. The notice shall either include details of the proposed action, or where the proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of the detailed proposed action can be obtained upon request from the Commission.
- (2) Any such notice shall be published at least once a week for three consecutive weeks in a newspaper of general circulation in the eastern, western and central regions of the State.
- (3) Any person desiring to be heard at any public hearing shall give notice thereof in writing to the Commission on or before the date set for the hearing. The Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any public hearing. The Commission shall permit anyone who so desires to file a written argument or other statement with it in relation to any proposed action at any time within 30 days following the conclusion of any public hearing or within any additional time as it may allow by notice given as prescribed in this section.

When the Commission has completed hearings and considered the submitted evidence and arguments with respect to any proposed action pursuant to this section, it shall adopt its final action with respect thereto and shall publish such final action as part of the official regulations of the Department.

(1979, c. 922, s. 2.)

Effect of Amendments. — The 1979 amendment rewrote subsection (b).

Only Part of Section Set Out. — As only

subsection (b) was changed by the amendment, the other subsections are not set out.

CASE NOTES

Quoted in *State ex rel. Lee v. Penland-Bailey Co.*, 50 N.C. App. 498, — S.E.2d — (1981).

§ 113A-57. Mandatory standards for land-disturbing activity.

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one contiguous acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be adopted by regulation by the Commission. (1973, c. 392, s. 8; c. 1417, s. 5; 1975, c. 847, s. 2; 1979, c. 564.)

Effect of Amendments. — The 1979 amendment substituted everything following "uncovered" in subdivision (3) for a provision requiring sufficient ground cover to restrain erosion to be planted, within 30 working days, on any portion of the tract which was not under active construction, and which would not form

the basin of a reservoir to be later inundated.

Only Part of Section Set Out. — As subdivisions (1) and (2) were not changed by the amendment, they are not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

CASE NOTES

Application to Activities Occurring Prior to Effective Date of Article. — Application of the Sedimentation Pollution Control Act of 1973 to prevent erosion and sedimentation of public waters resulting from "land-disturbing" activities which occurred before the statute became effective does not constitute an

unlawful retroactive application of the statute since the purpose of the statute is to control erosion and sedimentation rather than only land-disturbing activities. *State ex rel. Lee v. Penland-Bailey Co.*, 50 N.C. App. 498, — S.E.2d — (1981).

§ 113A-61. Approval of plans.

(c) The disapproval or modification of any proposed erosion control plan by a local government shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. The hearings shall be conducted pursuant to procedures adopted by the local government. If the local government upholds the disapproval or modification of a proposed erosion control plan following the public hearing, the person submitting the erosion control plan shall be entitled to appeal the local government's action disapproving or modifying the plan to the Commission. The Commission, by regulation, shall direct the Secretary to appoint such employees of the Department as may be necessary to hear appeals from the disapproval or modification of erosion control plans by local governments. In addition to providing for the appeal of local government decisions disapproving or modifying erosion control

plans to designated employees of the Department, the Commission shall designate an erosion control plan review committee consisting of three members of the Commission. The person submitting the erosion control plan may appeal the decision of an employee of the Department who has heard an appeal of a local government action disapproving or modifying an erosion control plan to the erosion plan review committee of the Commission. Judicial review of the final action of the erosion plan review committee of the Commission may be had in the superior court of the county in which the local government is situated.

(1979, c. 922, s. 1.)

Effect of Amendments. — The 1979 amendment added the third, fourth, fifth and sixth sentences to subsection (c), and substituted "of the erosion plan review committee of the Commission" for "of the local government on the proposed plan" near the beginning of the seventh sentence in subsection (c).

Only Part of Section Set Out. — As only subsection (c) was changed by the amendment, the other subsections are not set out.

Legal Periodicals. — For survey of 1979 administrative law, see 58 N.C.L. Rev. 1185 (1980).

ARTICLE 6.

North Carolina Trails System.

§ 113A-87. Authority to designate trails.

The Department may establish and designate State scenic and recreation trails on lands administered by the Department; or on lands under the jurisdiction of a State department, political subdivision, or federal agency or private lands providing fee-simple title, or lesser estates, scenic easements, easements of surface ingress and egress running with the land or leases are obtained from landowners through which a State trail may pass. (1973, c. 670, s. 1; 1979, c. 6, s. 1.)

Effect of Amendments. — The 1979 amendment inserted "or federal agency" near the middle of this section.

ARTICLE 7.

Coastal Area Management.

Cross References. — As to review and evaluation of the programs and functions authorized under this Article, see § 143-34.26.

Repeal of Article. —

The provision of Session Laws 1977, c. 712, as amended, tentatively repealing this Article effective July 1, 1983, was itself repealed by Session Laws 1981, c. 932, s. 1.

Part 1. Organization and Goals.

§ 113A-100. Short title.

Editor's Note. —

Session Laws 1981, c. 932, s. 2.1, amends Session Laws 1973, c. 1284, s. 3, as amended by Session Laws 1975, c. 452, s. 5, by deleting the provision for expiration of the 1973 act.

Legal Periodicals. — For article analyzing and evaluating this Article in the light of the Federal Coastal Zone Management Act of 1972, see 53 N.C.L. Rev. 275 (1974).

For article, "The Coastal Area Management Act in the Courts: A Preliminary Analysis," see 53 N.C.L. Rev. 303 (1974).

For article, "A Legislative History of the Coastal Area Management Act," see 53 N.C.L. Rev. 345 (1974).

For comment, "Urban Planning And Land

Use Regulation: The Need For Consistency," see 14 Wake Forest L. Rev. 81 (1978).

For survey of 1978 administrative law, see 57 N.C.L. Rev. 831 (1979).

For survey of 1978 constitutional law, see 57 N.C.L. Rev. 958 (1979).

CASE NOTES

The coastal counties constitute a valid legislative class for the purpose of addressing the special and urgent environmental problems found in the coastal zone. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The Coastal Area Management Act of 1974 is a general law which the General Assembly had power to enact. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The Coastal Area Management Act of 1974 properly delegates authority to the Coastal Resources Commission to develop,

adopt and amend State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The authority delegated to the Coastal Resources Commission is accompanied by adequate guiding standards in the form of legislative declarations of goals and policies, and procedural safeguards. The General Assembly properly delegated to the Commission the authority to prepare and adopt State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-101. Cooperative State-local program.

CASE NOTES

Quoted in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-102. Legislative findings and goals.

CASE NOTES

Commission Has Been Given Adequate Guidelines. — The goals, policies and criteria outlined in this section and § 113A-113 provide the members of the Coastal Resources Commission with an adequate notion of the legislative parameters within which they are to operate in the exercise of their delegated powers. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The declarations of legislative findings and goals, articulated in this section and the criteria for designating areas of environmental concern in § 113A-113 are as specific as the circumstances permit. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-103. Definitions.

As used in this Article:

- (1) "Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.
- (2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be

identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. The said coastal-area counties and cities shall thereafter transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).

- (3) "Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. "Normal conditions" shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:
- a. On the Chowan River, its confluence with the Meherrin River;
 - b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
 - c. On the Tar River, its confluence with Tranters Creek;
 - d. On the Neuse River, its confluence with Swift Creek;
 - e. On the Trent River, its confluence with Ready Branch.

Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.

- (4) "Commission" means the Coastal Resources Commission created by G.S. 113A-104.
- (5) a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal.
- b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:
1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;

2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains, pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
3. Work by any utility and other persons for the purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
4. The use of any land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.
6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;
7. Completion of any development, not otherwise in violation of law, for which a valid building or zoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;
10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.

c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:

1. The size of the improved or scope of the maintenance work;
2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
3. Whether or not dredging or filling is involved in the maintenance or improvement.

(6) "Key facilities" include the site location and the location of major improvement and major access features of key facilities, and mean:

a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:

1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
3. Major frontage-access streets and highways, both of State concern; and
4. Major recreational lands and facilities;

b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.

(7) "Lead regional organizations" means the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.

(8) "Local government" means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.

(9) "Person" means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.

(10) "Rule" means any policy, regulation or requirement of general application adopted pursuant to this Article. (1973, c. 1284, s. 1; 1981, c. 913, s. 1.)

Effect of Amendments. — The 1981 amendment rewrote subdivision (5)b5.

CASE NOTES

The coastal counties constitute a valid legislative class for the purpose of addressing the special and urgent environmental problems found in the coastal zone. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

"Coastal Area." — The boundaries of the coastal area could not be formulated with mathematical exactness. The criterion ultimately chosen by the General Assembly to distinguish the salty coastal sounds from the fresh water coastal rivers which fed into the

sounds was "the limit of seawater encroachment" on a given coastal river under normal conditions. The western boundary of the coastal zone as determined by use of the seawater encroachment criterion is reasonably related to the purpose of the act. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The definition in subdivision (2) accurately reflects the unique geography of the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Inland Limits of Coastal Sounds Are Western Boundary of Coastal Zone. — The inland limits of the coastal sounds in effect constitute the western boundaries of the coastal zone for purposes of the act. *Adams v. North*

Carolina Dep't of Natural & Economic Resources, 295 N.C. 683, 249 S.E.2d 402 (1978).

Jones and Pitt Counties Excluded. — Two counties, Jones and Pitt, were excluded from the act as the result of the General Assembly excluding from the coverage of the act all counties which adjoined a point of confluence and lay entirely west of said point. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The slight extent of seawater encroachment into Jones and Pitt counties was of no significance to an accurate and reasonable definition of the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-104. Coastal Resources Commission.

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-105. Coastal Resources Advisory Council.

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Part 2. Planning Processes.

§ 113A-106. Scope of planning processes.

CASE NOTES

Cited in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-107. State guidelines for the coastal area.

CASE NOTES

Authority Properly Delegated. — The Coastal Area Management Act of 1974 properly

delegates authority to the Coastal Resources Commission to develop, adopt and amend State

guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The authority delegated to the Coastal Resources Commission is accompanied by adequate guiding standards in the form of legislative declarations of goals and policies, and procedural safeguards. The General Assembly properly delegated to the Commission the authority to prepare and adopt State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Input and Review Provisions Guard against Arbitrary Commission Action. — The broad provisions in this section for input and review by groups representing all levels and types of agencies and interests provide a substantial curb against arbitrary and unreasoned action by the Coastal Resources Commission. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Commission Rules Subject to Review. — Pursuant to § 120-30.24 et seq., all rules adopted by the Coastal Resources Commission are subject to review by a permanent committee of the Legislative Research Commission known as the Administrative Rules Committee. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Construction with Administrative Procedure Act. — The mandatory provisions of the Administrative Procedure Act must be read as complementing the procedural safeguards in the Coastal Area Management Act of 1974 itself. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Amendments to the State guidelines by the Coastal Resources Commission are considered administrative rulemaking under § 150A-10 and thus subject to the comprehensive additional safeguards contained in the Administrative Procedure Act. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Review of Coastal Resources Commission. — Under the "Sunset" legislation, entitled "Periodic Review of Certain State Agencies," § 143-34.10 et seq., the Coastal Resources Commission is subjected to review by the Governmental Evaluations Commission, §§ 143-34.16 and 143-34.17; to public hearings held by the Governmental Evaluations Commission, § 143-34.18; and to hearings, and recommendations of legislative committees, § 143-34.19. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-108. Effect of State guidelines.

CASE NOTES

The Coastal Area Management Act of 1974 properly delegates authority to the Coastal Resources Commission to develop, adopt and amend State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The authority delegated to the Coastal Resources Commission is accompanied by adequate guiding standards in the form of legislative declarations of goals and policies, and procedural safeguards. The General

Assembly properly delegated to the Commission the authority to prepare and adopt State guidelines for the coastal area. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Purpose of State Guidelines. — The State guidelines are designed to facilitate State and local government compliance with the planning and permit-letting aspects of the act. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-109. County letter of intent; timetable for preparation of land-use plan.

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-110. Land-use plans.

Legal Periodicals. — For comment on public participation in local land use planning, see 53 N.C.L. Rev. 975 (1975).

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-111. Effect of land-use plan.

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Part 3. Areas of Environmental Concern.

§ 113A-113. Areas of environmental concern; in general.

CASE NOTES

The Commission Has Been Given Adequate Guidelines. — The goals, policies and criteria outlined in § 113A-102 and this section provide the members of the Coastal Resources Commission with an adequate notion of the legislative parameters within which they are to operate in the exercise of their delegated powers. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The declarations of legislative findings and goals, articulated in § 113A-102 and the criteria for designating areas of environmental concern in this section are as specific as the circumstances permit. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-114. Designation of interim areas of environmental concern; notice of developments within such areas.

CASE NOTES

There was no justiciable controversy in a declaratory judgment action on the question of whether there was an unconstitutional taking of the plaintiffs' land as the result of the design-

nation of their land as an interim area of environmental concern where, at the time the case was tried, the plaintiffs had no occasion to seek development permits, variances, or exemptions

from coverage, and could only speculate as to the effect the act would have on the usefulness and value of their specific plots of land. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

The designation of land as an interim area of environmental concern under this

section does not subject development to a permit requirement; it merely requires the developer to give the state 60 days notice before undertaking the proposed activity. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-115. Designation of areas of environmental concern.

CASE NOTES

Quoted in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

Part 4. Permit Letting and Enforcement.

§ 113A-118. Permit required.

(c) Permits shall be obtained from the Commission or its duly authorized agent, with a right to appeal a permit denial to the Commission pursuant to the quasi-judicial procedures provided in G.S. 113A-122.

(1979, c. 253, s. 5.)

Effect of Amendments. — The 1979 amendment substituted the present subsection (c) for one which read: "Under the quasi-judicial procedure provided for by G.S. 113A-122, the

permit shall be obtained from the Commission."

Only Part of Section Set Out. — As only subsection (c) was changed by the amendment, the rest of the section is not set out.

CASE NOTES

The designation of land as an interim area of environmental concern under this section does not subject development to a permit requirement; it merely requires the

developer to give the state 60 days notice before undertaking the proposed activity. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-120. Grant or denial of permits.

Cited in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-121. Permits for minor developments under expedited procedures.

(a) Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.

(b) In cities and counties that have developed approved implementation and

enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary of Natural Resources and Community Development.

(c) Failure of the Secretary or the designated local official (as the case may be) to approve or deny an application for a permit for a minor development within 30 days from receipt of application shall be treated as approval of such application, except that the Secretary or the designated local official (as the case may be) may extend such deadline by not more than an additional 30 days if necessary to properly consider the application. No waiver of the foregoing time limitation (or of the time limitation established in G.S. 113A-122(c)) shall be required of any applicant.

(d) Repealed by Session Laws 1981, c. 913, s. 2. (1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1981, c. 913, s. 2.)

Effect of Amendments. — The 1981 amendment deleted subsection (d) which established

procedures for review of the grant or denial of permits.

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-121.1. Review of grant or denial of permits.

(a) Any person who is directly affected by the decision of the Secretary or the designated local official (as the case may be) to grant or deny an application for a minor development permit, may request in writing within 20 days of such action, a hearing before the Commission. In the case of a grant or denial of a permit by a local official, the Secretary shall be considered to be a person affected by the decision.

(b) Any person who is directly affected by the decision of the Commission or its duly authorized agent to grant or deny an application for a major development permit may submit a written request, within 20 days of such action, for a hearing before the Commission.

(c) Requests for a hearing by any person other than the applicant or the Secretary shall be reviewed by the Commission or its duly authorized agent to determine whether a hearing should be granted. The determination of whether to grant a hearing shall be in the sole discretion of the Commission or its duly authorized agent and shall be based on consideration of the following factors:

1. Whether the petitioner has alleged that the decision was contrary to applicable statutes and/or regulations;
2. Whether the petitioner is a person directly affected by the decision;
3. Whether, upon consideration of all the information available, the petitioner has a reasonable likelihood of success on the merits.

Denial of a request for a hearing pursuant to this paragraph shall be a final decision of the Commission which may be appealed under G.S. 113A-123.

(d) Pending final disposition of any such review by the Commission, no action shall be taken which would be unlawful in the absence of a permit under this Part.

(e) In cases where the request for a hearing has been denied under paragraph (c) of this section, development authorized by the permit may be undertaken unless prohibited by an order of the superior court. (1981, c. 913, s. 3.)

§ 113A-122. Permits under quasi-judicial procedures.

(a) The procedure set forth in this section applies to all appeals of permit applications for major developments, as well as to permit applications for minor developments whose disposition was appealed under G.S. 113A-121.1. All permit appeals subject to this section shall be heard by the Commission.

(b) The following provisions shall be applicable in connection with hearings pursuant to this section:

- (1) Any hearing held pursuant to this section shall be held upon not less than 30 days' written notice given by the Commission to any person who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.
- (2) All hearings under this section shall be open to the public. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission for decision.
- (3) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.
- (4) The Commission and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.
- (5) The Commission and its duly authorized agents may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.
- (6) Subpoenas issued by the Commission in connection with any hearing under this section shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Commission, application may be made to the superior court of the appropriate county for enforcement thereof.
- (7) The burden of proof at any hearing on appeal shall be upon the person who requested the hearing.
- (8) No decision or order of the Commission shall be made in any proceeding unless the same is supported by competent, material, and substantial evidence upon consideration of the whole record.
- (9) Following any hearing, the Commission shall afford the parties thereto an opportunity to submit within 20 days, or within such additional time as prescribed by the Commission, proposed findings of fact and conclusions of law and any brief in connection therewith.
- (10) After hearing the evidence, the Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such

orders and decisions of the Commission shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.

- (11) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.

(c) Failure of the Commission to approve or deny an application for a permit (or to dispose of an appeal) pursuant to this section within 90 days from receipt of application or notice of appeal shall be treated as approval of such application or of the action appealed from, as the case may be, except that the Commission may extend such deadline by not more than an additional 90 days if necessary to properly consider the application or the appeal.

(d) All notices which are required to be given by the Secretary or Commission or by any party to a proceeding under this section shall be given by registered or certified mail to all persons entitled thereto. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Commission may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Commission may prescribe the form and content of any particular notice. (1973, c. 1284, s. 1; 1979, c. 253, s. 6; 1981, c. 913, ss. 4-6.)

Effect of Amendments. — The 1979 amendment inserted "appeals of" near the middle of the first sentence of subsection (a), and substituted "appeals" for "applications" near the beginning of the second sentence of subsection (a).

The 1981 amendment substituted "G.S. 113A-121.1" for "G.S. 113A-121(d)" in the first sentence of subsection (a), rewrote subdivision (b)(7) and substituted "20" for "30" in subdivision (b)(9).

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-123. Judicial review.

CASE NOTES

Stated in *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

§ 113A-125. Transitional provisions.

(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; and regulations concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Human Resources of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Human Resources pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and regulations issued by the Department of Human Resources pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control programs or districts; any permits, licenses, authorizations, regulations, approvals or certificates issued by the Department of Human Resources relating to septic tanks or water wells; oil or gas well regulations and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S. 113A-60 or 113A-61; and any permits, licenses, authorizations, regulations, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(1979, c. 299.)

Editor's Note. — Section 104B-4, referred to in subsection (c) of this section, was repealed by Session Laws 1979, c. 141, s. 1, effective July 1, 1979. Section 143-215.99, referred to in subsection (c), was repealed by Session Laws 1975, c. 521, s. 1. Sections 130-161.1 and 130-161.2, referred to in subsection (c), were repealed by Session Laws 1979, c. 788, s. 2.

Effect of Amendments. — The 1979 amend-

ment deleted "restricted-use pesticide permits issued pursuant to G.S. 143-440(b), pesticide applicator licenses issued pursuant to G.S. 143-452 for persons who may apply pesticides within the coastal area" after "G.S. 87-88" near the middle of subsection (c).

Only Part of Section Set Out. — As only subsection (c) was changed by the amendment, the other subsections are not set out.

§ 113A-126. Injunctive relief and penalties.**CASE NOTES**

Trial Court without Jurisdiction. — The trial court was without jurisdiction in a declaratory judgment action to pass upon the question of whether subsection (d)(1)c of this section authorizes warrantless searches in violation of the Fourth Amendment where the plaintiffs did

not allege that they had been subject to actual searches or that they had been fined for refusing access to investigators. *Adams v. North Carolina Dep't of Natural & Economic Resources*, 295 N.C. 683, 249 S.E.2d 402 (1978).

ARTICLE 7A.***Coastal Beach Access Program.*****§ 113A-134.1. Legislative findings.**

It is determined and declared as a matter of legislative findings that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean in North Carolina that have been and will be adversely affected by the coastal hazards such as erosion, flooding and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

The public has traditionally fully enjoyed the State's ocean beaches and public access to and use of the beaches. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The ocean beaches are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to ocean beaches in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. Public purposes would be served by providing increased access to ocean beaches, public parking facilities, or other related public uses. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement and maintenance of public accessways to the ocean beaches. (1981, c. 925, s. 1.)

§ 113A-134.2. Creation of program; administration; purpose.

There is created the Coastal Beach Access Program, to be administered by the Coastal Resources Commission and the Department of Natural Resources and Community Development, for the purpose of acquiring, improving and maintaining property along the Atlantic Ocean, as provided in this Article. (1981, c. 925, s. 1.)

§ 113A-134.3. Standards for beach access program.

The Coastal Resources Commission, with the support of the Department of Natural Resources and Community Development, shall establish and carry out a program to assure the acquisition, improvement and maintenance of a system of public access to ocean beaches. This beach access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of said property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands which, due to adverse effects of coastal natural hazards, such as past and potential erosion, flooding and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules and regulations promulgated pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all areas of the North Carolina coast where access is compatible with the natural resources involved and where reasonable access is not already available as of June 30, 1981. To the maximum extent possible, this program shall be coordinated with State and local coastal management and recreational programs and carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary of Natural Resources and Community Development or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department of Natural Resources and Community Development may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose. These land acquisition funds shall not be used to purchase property held for less than two years by the current owner. These funds may be used to meet matching requirements for federal or other funds. The Department of Natural Resources and Community Development shall make every effort to obtain funds from sources other than the general fund for these purposes. Funds may be used to acquire or develop land for pedestrian access including parking or to make grants to local governments to accomplish the purposes of this Article. All acquisitions or dispositions of property made pursuant to this Article shall be in accordance with the provisions of Chapter 146 of the General Statutes. (1981, c. 925, s. 1.)

ARTICLE 9.***Land Policy Act.*****§ 113A-153. North Carolina Land Policy Council.**

(a), (b) Repealed by Session Laws 1981, c. 881, s. 3.

(c) Duties. —

- (1) To assemble and analyze significant existing laws, policies and programs in State and local government as they pertain to or have substantial effect upon the use, management, development or conservation of all lands and waters, public and private, within the State of North Carolina.
- (2) To define and cause to be prepared and periodically revised, a system of information and data concerning the land resources of the entire State, including, but not limited to, esthetic, economic, ecological, demographic, geologic, and physical conditions, both current and

projected, as well as a continuing inventory of governmental and private needs and priorities for the use of land resources. All State agencies and units of local government including the register of deeds of each county shall make all pertinent data in their custody available to the Land Policy Council.

- (3) To consider, and to consult with the federal government and relevant states on, the interstate aspects of land-use issues of more than intrastate concern.
- (4) To prepare, and revise on a continuing basis, an inventory of public and private institutional and financial resources available for land-use planning and management within the State and of State and local programs, projects, and activities which have a regional impact of more than local concern.
- (5) To establish a method for identifying new community and large-scale development and land-use projects with regional impact.
- (6) To prepare, in consultation with concerned State agencies and other recognized authorities, principles and guidelines for the systematic identification of areas of environmental concern.
- (7) To provide technical assistance and training programs for State and local agency personnel concerned with the development and implementation of State and local land-use programs.
- (8) To establish a method for coordinating all State and local agency programs and services which significantly affect land use.
- (9) To prepare, in conjunction with the Advisory Committee on Land Policy as described in G.S. 113A-154, and following procedures established by this Article, a State land policy as defined in G.S. 113A-155.
- (10) To prepare, in conjunction with the Advisory Committee on Land Policy as described in G.S. 113A-154, and after consultation with the duly constituted and authorized planning agencies of local governments, and following procedures established by this Article, a State land policy and State land classification system as defined further in this Article.
- (11) To prepare and recommend to the General Assembly a system of valuation of property for tax purposes related to the range of public services available or to be made available to properties designated in each of the several land classifications.

(d) Hearings. — The Council shall conduct such public hearings as it shall determine to be necessary or appropriate to the development of the State land policy and the State land classification system, provided only that there be no fewer than six such hearings held, two in each of the three major physiographic regions of the State. The Council shall give adequate public notice of each hearing at least 30 calendar days prior to the date of the hearing and shall consider all relevant statements and matters presented at hearings.

The Council shall designate the place and time of hearing and may adopt appropriate rules of procedure governing the conduct of the hearing, including the presentation of oral and written statements, and the form, content and method of giving notice of hearing.

(e) Acceptance and Administration of Federal or Private Funds. — The Department of Natural Resources and Community Development shall have power and authority to accept, receive and administer, on behalf of the Council, any funds, gifts, bequests, or other financial assistance given, granted or provided by legislative appropriation, or under any federal act or acts or from any federal agency, or from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds to the extent not inconsistent with the laws of this State and the rules and regulations thereunder pertaining to land-use planning and management. The Council shall have authority to formulate plans and projects for

the approval of all funding agencies and institutions and to enter into such contracts and agreements as may be necessary for such purposes or to enter into joint agreements with any other agency or division of government for such purposes and to furnish such information as may be requested for any project or program related to or conducted pursuant to such plans and contracts. Such funds received by the Council pursuant to this provision shall be deposited in the State treasury to the account of the Council and shall remain in such account until used by the Council. (1973, c. 1306, s. 1; 1977, c. 771, ss. 4, 15, 1979, c. 44, s. 1; 1981, c. 47, s. 1; c. 881, s. 3.)

Editor's Note. — Section 113A-154, referred to in this section, was repealed by Session Laws 1981, c. 881, s. 3.

Effect of Amendments. — The 1979 amendment made changes in subdivision (1)a of former subsection (b).

The first 1981 amendment made changes in subdivision (1)c of former subsection (b).

The second 1981 amendment deleted subsections (a) and (b), which established the North Carolina Land Policy Council and provided for its composition and staff.

Session Laws 1981, c. 881, s. 1, provides: "The Land Policy Council, as established by G.S. 113A-153, is hereby abolished."

§ 113A-154: Repealed by Session Laws 1981, c. 881, s. 3.

§ 113A-157: Repealed by Session Laws 1981, c. 881, s. 3.

ARTICLE 11.

Forest Development Act.

§ 113A-183. Forest Development Fund.

(a) There is hereby created in the Department of Natural Resources and Community Development a fund to be designated the Forest Development Fund, for which fiscal management and responsibility are hereby vested in the Secretary.

(b) This fund shall be the depository for all revenue derived from the forest development assessment on primary forest product processors as authorized by the General Assembly, and for any funds appropriated specifically for the forest development program from the general fund. Those funds appropriated from the general fund remaining in the Forest Development Fund at the end of any fiscal year shall revert to the general fund, but revenues derived from the forest development assessment shall not revert but shall remain in the Forest Development Fund until expended under the provisions of this Article.

(c) In any fiscal year, expenditures from the Forest Development Fund shall be limited to four times the amount of the general fund appropriation for that year.

(d) In any fiscal year, no more than five percent (5%) of the available funds generated by the Primary Forest Product Processor Assessment Act shall be used for program support under the provisions of G.S. 113A-179(c).

(e) Funds used for the purchase of equipment under the provisions of G.S. 113A-179(d) shall be limited to appropriations from the general fund to the Forest Development Fund designated specifically for equipment purchase. (1977, c. 562, s. 8; c. 771, s. 4; 1981, c. 1127, s. 45.)

Effect of Amendments. — The 1981 amendment substituted "four times" for "three times" in subsection (c).

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

ARTICLE 12.

Primary Forest Product Assessment Act.

§§ 113A-197 to 113A-201: Reserved for future codification purposes.

ARTICLE 13.

Toxic Substances Task Force and Incident Response Procedures.

§§ 113A-202, 113A-203: Repealed by Session Laws 1979, 2nd Session, c. 1310, s. 3.

Cross References. — As to powers and duties of the Secretary of Crime Control and Public Safety with regard to man-made or natural disasters or accidents, see § 143B-476.

Chapter 113B.

North Carolina Energy Policy Act of 1975.

Article 1.

Energy Policy Council.

Sec.

- 113B-3. Composition of Council; appointments; terms of members; qualifications.
113B-4. Chairman of Council; replacement; reimbursement of members.

Sec.

- 113B-7. Energy Conservation Plan; components.
113B-8. Energy Management Plan; components.
113B-9. Emergency Energy Program; components.

ARTICLE 1.

Energy Policy Council.

§ 113B-3. Composition of Council; appointments; terms of members; qualifications.

(a) The Energy Policy Council shall consist of 18 members to be appointed as follows:

- (1) Two members of the North Carolina House of Representatives to be appointed by the Speaker of the House of Representatives;
- (2) Two members of the North Carolina Senate to be appointed by the President of the Senate;
- (3) Nine public members who are citizens of the State of North Carolina to be appointed by the Governor;
- (4) The chairman of the North Carolina Utilities Commission, the Secretary of the Department of Natural Resources and Community Development, the Commissioner of Agriculture, the Secretary of Commerce and the Secretary of Administration or their designees from their respective departments.

(b) Initial appointments to the Energy Policy Council shall be made by July 15, 1975, and each such appointee shall serve until January 31, 1977. Thereafter, the appointed members of the General Assembly shall serve two-year terms, and the appointed public members shall serve four-year terms. A member of the Energy Policy Council shall continue to serve until his successor is duly appointed, but such holdover shall not affect the expiration date of such succeeding term.

(c) The public members of the Energy Policy Council shall have the following qualifications:

- (1) One such member shall be experienced in the electric power industry;
- (2) One such member shall be experienced in the natural gas industry;
- (3) One such member shall be experienced in the petroleum marketing industry;
- (4) One such member shall be experienced in economic analysis of energy requirements;
- (5) One such member shall be experienced in environmental protection;
- (6) One such member shall be experienced in industrial energy consumption;
- (7) One such member shall be knowledgeable of alternative sources of energy;
- (8) One such member who, at the time of appointment, is a county commissioner; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as a county commissioner;

- (9) One such member who, at the time of appointment, is an elected municipal official; provided, such member's term on the Council shall expire immediately in the event that he or she vacates office as an elected municipal official. (1975, c. 877, s. 4; 1977, c. 23, ss. 1, 5; c. 771, s. 4; 1979, c. 422; 1981, c. 701, ss. 4, 5.)

Effect of Amendments. — The 1979 amendment substituted "16" for "15" in the introductory sentence of subsection (a) and added "and the Secretary of Administration or their designees from their respective departments" at the end of subdivision (4) of subsection (a).

The 1981 amendment, effective July 1, 1981, substituted "18" for "16" in the introductory clause of subsection (a), substituted "Nine" for "Seven" in subdivision (a)(3) and added subdivisions (c)(8) and (c)(9).

§ 113B-4. Chairman of Council; replacement; reimbursement of members.

(c) Members of the Energy Policy Council shall be reimbursed for their services pursuant to the provisions of G.S. 138-5. (1975, c. 877, s. 4; 1979, c. 514, s. 1.)

Effect of Amendments. — The 1979 amendment deleted the former second sentence of subsection (c), which read: "Funds for said purpose shall be paid from the Contingency and Emer-

gency Fund."

Only Part of Section Set Out. — As subsections (a) and (b) were not changed by the amendment, they are not set out.

§ 113B-7. Energy Conservation Plan; components.

(a) The Energy Policy Council shall prepare a recommended Energy Conservation Plan for transmittal to the Governor, the initial plan to be completed by January 30, 1976.

(b) The Energy Conservation Plan shall be designed to assure the public health and safety of the people of North Carolina and to encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

(c) The Energy Conservation Plan shall include but not be limited to the following recommendations:

- (1) Recommendations to the Building Code Council for lighting, insulation, climate control systems and other building design and construction standards which increase the efficient use of energy and are economically feasible to implement;
- (2) Recommendations to the Building Code Council for per unit energy requirement allotments based upon square footage for various classes of buildings which would reduce energy consumption, yet are both technically and economically feasible and not injurious to public health and safety;
- (3) Recommendations for minimum levels of operating efficiency for all appliances whose use requires a significant amount of energy based upon both technical and economic feasibility considerations;
- (4) Recommendations for State government purchases of supplies, vehicles and equipment and such operating practices as will make possible more efficient use of energy;
- (5) Recommendations on energy conservation policies, programs and procedures for local units of government;
- (6) Any other recommendations which the Energy Policy Council considers to be a significant part of a statewide conservation effort and

which include provisions for sufficient incentives to further energy conservation;

- (7) An economic and environmental impact analysis of the recommended plan.

(d) In addition to specific conservation recommendations, the Energy Conservation Plan shall contain proposals for implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Conservation Plan, the Council shall transmit said plan, to be known as the State Energy Conservation Plan, to the Governor for approval or disapproval. Upon approval, the Governor shall assign administrative responsibility for such implementation as can be carried out by executive order to appropriate agencies of State government, and submit to the General Assembly such proposals which require legislative action for implementation. The Governor shall have the authority to accept, administer, and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to the conservation of energy resources.

(f) The Governor shall transmit the approved Energy Conservation Plan to the President of the Senate, to the Speaker of the House of Representatives, to the heads of all State agencies and shall further seek to publicize such plan and make it available to all units of local government and to the public at large.

(g) At least every two years and whenever such changes take place as would significantly affect energy supply or demand in North Carolina, the Energy Policy Council shall review and, if necessary, revise the Energy Conservation Plan, transmitting such revised plan to the Governor pursuant to the procedures contained in subsections (e) and (f) of this section. (1975, c. 877, s. 4; 1981, c. 701, s. 1.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the last sentence of subdivision (e).

§ 113B-8. Energy Management Plan; components.

(a) The Energy Policy Council shall prepare a recommended Energy Management Plan for transmittal to the Governor, the initial plan to be completed by June 30, 1976.

(b) The Energy Management Plan shall be designed to encourage the most efficient use of all sources of energy available to meet the needs of the State and to avoid undue dependence upon relatively limited, unreliable or uneconomical sources of energy.

(c) The Energy Management Plan shall include but not be limited to the following:

- (1) An analysis of the current pattern of consumption of energy throughout the State by category of energy user and by sources of energy supply;
- (2) An assessment of the effect of demand and supply of different forms of energy upon the current pattern of consumption;
- (3) An independent analysis, in five-, 10- and 20-year forecasts, of future energy production, supplies and consumption for North Carolina in relation to forecasts of statewide population growth and economic expansion;

- (4) An analysis of the anticipated effects of recommended conservation measures upon the consumption of energy in the State;
- (5) An assessment of the possible effects of national energy and economic policy and international economic and political conditions upon an adequate and reliable supply of different forms of energy for North Carolina;
- (6) An assessment of the social, economic and environmental effects of alternative future consumption patterns on energy usage in North Carolina, including the potentially disruptive effects of supply limitations;
- (7) Recommendations on the use of different future energy sources that seem most appropriate and feasible for North Carolina in meeting expected energy needs during the next five-, 10- and 20-year periods, with consideration given to growth trends in North Carolina industry and possible adverse economic impact on such trends.

(d) In addition to the above, the Energy Management Plan shall contain proposals for the implementation of such recommendations as can be carried out by executive order. Upon completion of a draft recommended plan, the Council shall arrange for its distribution to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(e) Upon completion of the Energy Management Plan, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(f) The Council shall update such plan upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(g) The Governor shall have the authority to accept, administer and enforce federal programs, program measures, and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to management of energy resources.

(h) The Governor shall have the authority to accept, administer and enforce the delegation of authority delegated to the State by the Emergency Petroleum Allocation Act and the Emergency Energy Conservation Act of 1979 and any orders, rules, and regulations issued pursuant to those acts as well as any succeeding federal programs, program measures, laws, orders, or regulations relating to the allocation, conservation, consumption, management or rationing of energy resources. (1975, c. 877, s. 4; 1981, c. 701, s. 2.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subsections (g) and (h).

§ 113B-9. Emergency Energy Program; components.

(a) The Energy Policy Council shall, in accordance with the provisions of this Article, develop contingency and emergency plans to deal with possible shortages of energy to protect public health, safety and welfare, such plans to be compiled into an Emergency Energy Program.

(b) Within four months of July 1, 1975:

- (1) Each electric utility and natural gas utility in the State shall prepare and submit to the Energy Policy Council a proposed emergency curtailment plan setting forth proposals for identifying priority loads or users in the event of the declaration of an energy crisis pursuant to G.S. 113B-20, and proposals for supply allocation to such priority loads or users.

(2) Each major oil producer doing business in this State as determined by the Energy Policy Council shall prepare and submit to the Energy Policy Council an analysis of how any national supply curtailment pursuant to federal regulations shall affect the supply for North Carolina and how priority users will be determined and available supplies allocated to such users.

(c) The Energy Policy Council shall encourage the preparation of joint emergency curtailment plans and analyses. If such cooperative plans and analyses are developed between two or more utilities, major producers or by an association of such companies, the joint plans or analyses may be submitted to the Energy Policy Council in lieu of information required pursuant to subsection (b) of this section.

(d) The Energy Policy Council shall collect from all relevant governmental agencies any existing contingency plans for dealing with sudden energy shortages or information related thereto.

(e) The Energy Policy Council shall hold one or more public hearings, investigate and review the plans submitted pursuant to this section, and, within nine months after July 1, 1975, the Energy Policy Council shall approve and recommend to the Governor guidelines for emergency curtailment to be known as the Emergency Energy Program and to be implemented upon adoption by the Governor after the declaration of an energy crisis and pursuant to G.S. 113B-20 and 113B-23. Said program shall be based upon the plans presented to the Energy Policy Council, upon independent analysis and study by the Council, and upon information provided at the hearing or hearings, provided, however, that they are consistent with such federal programs and regulations as are already in effect at that time.

(f) The Emergency Energy Program shall provide for the maintenance of essential services, the protection of public health, safety, and welfare, and the maintenance of a sound basic State economy. Provisions also shall be made in said program to differentiate curtailment of energy consumption by users on the basis of ability to accommodate such curtailments, and shall also include, but not be limited to, the following:

- (1) A variety of strategies and staged conservation measures of increasing intensity and authority to reduce energy use during an energy crisis, as defined in G.S. 113B-20 and guidelines and criteria for allocation of energy sources to priority users. The program shall contain alternative conservation actions and allocation plans to reasonably meet various foreseeable shortage circumstances and to allow a choice of appropriate responses;
- (2) Evidence that the program is consistent with requirements of federal emergency energy conservation and allocation laws and regulations;
- (3) Proposals to assist such individuals, institutions, agriculture and businesses which have engaged in energy saving measures;
- (4) Repealed by Session Laws 1981, c. 701, s. 3.

(g) The Energy Policy Council shall carry out such investigations and studies as are necessary to determine if and when potentially serious shortages of energy are likely to affect North Carolina and the Council shall make recommendations to the Governor concerning administrative and legislative actions required to avert such shortages, such recommendations to be included as a section of the Emergency Energy Program.

(h) In addition to the above information and recommendations, the program shall contain proposals for implementation of such recommendations which include procedures, rules and regulations and agency administrative responsibilities for implementation, and shall further contain procedures for fair and equitable review of complaints and requests for special exemptions from emergency conservation measures or emergency allocations. Upon completion of a draft recommended plan, the Council shall arrange for its distribu-

tion to interested parties and shall make such plan available to the public and the Council further shall set a date for public hearing on said plan.

(i) Upon completion of the Emergency Energy Allocation Program, the Council and the Governor shall follow the procedures as outlined in G.S. 113B-7(e) and (f).

(j) The Council shall update said program upon a finding by it that an update is justified and shall follow the procedures for adoption pursuant to G.S. 113B-7(e) and (f).

(k) The Governor shall have the authority to accept, administer and enforce federal programs, program measures and permissive delegations of authority delegated to the Governor by the President of the United States, Congress, or the United States Department of Energy, on behalf of the State of North Carolina, which pertain to actions necessary to deal with an actual or impending energy shortage. (1975, c. 877, s. 4; 1979, c. 514, s. 2; 1981, c. 701, s. 3.)

Effect of Amendments. — The 1979 amendment substituted "upon a finding by it that an update is justified" for "every three years" near the middle of subsection (j).

The 1981 amendment, effective July 1, 1981, deleted subdivision (f)(4), which concerned state implementation of federal energy programs and added subsection (k).

Chapter 114.

Department of Justice.

Article 1.

Attorney General.

Sec.

114-2. Duties.

114-4.2D. Employment of attorney for Energy Division of Department of Commerce.

114-4.2E. [Repealed.]

Article 4.

State Bureau of Investigation.

114-13. Director of the Bureau; personnel.

Sec.

114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

114-19.1. Fees for performing certain background investigations.

114-20.1. Authority to designate areas for protection of public officials.

ARTICLE 1.

Attorney General.

§ 114-1. Creation of Department of Justice under supervision of Attorney General.

Legal Periodicals. — For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

§ 114-2. Duties.

It shall be the duty of the Attorney General:

(4) To consult with and advise the prosecutors, when requested by them, in all matters pertaining to the duties of their office.

(1979, c. 107, s. 9.)

Effect of Amendments. — The 1979 amendment substituted "prosecutors" for "solicitors" in subdivision (4).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivision (4) are set out.

Legal Periodicals. — For article entitled, "The Common Law Powers of the Attorney General of North Carolina," see 9 N.C. Cent. L.J. 1 (1977).

For an article on antitrust and unfair trade practice law in North Carolina, with federal law compared, see 50 N.C.L. Rev. 199 (1972).

CASE NOTES

Applied in *Nash County Bd. of Educ. v. Biltmore Co.*, 464 F. Supp. 1027 (E.D.N.C. 1978); *Nash County Bd. of Educ. v. Biltmore Co.*, 640 F.2d 484 (4th Cir. 1981).

Quoted in *State ex rel. Commissioner of Ins. v. North Carolina Rate Bureau*, 300 N.C. 381, 269 S.E.2d 547 (1980).

§ 114-4.2D. Employment of attorney for Energy Division of Department of Commerce.

The Attorney General shall assign an attorney on his staff to work full time with the Energy Division of the Department of Commerce. Such attorney shall be subject to all provisions of Chapter 126 of the General Statutes relating to the State Personnel System. Such attorney shall also perform such additional duties as may be assigned to him by the Attorney General. (1979, c. 942.)

Editor's Note. — Session Laws 1979, c. 942, s. 2, makes this section effective July 1, 1979.

§ 114-4.2E: Repealed by Session Laws 1981, c. 859, s. 13.10, effective July 1, 1981.

Editor's Note.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

ARTICLE 4.

State Bureau of Investigation.

§ 114-13. Director of the Bureau; personnel.

The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Department of Administration under G.S. 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Department of Administration under G.S. 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1; 1957, c. 269, s. 1; 1979, 2nd Sess., c. 1272, s. 3.)

Cross References. — As to payment of salaries of certain State law-enforcement officers incapacitated as the result of injury by accident or occupational disease arising out of and in the course of performance of their duties, see § 143-166.13 et seq.

Effect of Amendments. — The 1979, 2nd Sess., amendment deleted the former second paragraph, relating to application of subsec-

tions (b) through (e) of § 20-185 to officers and special agents of the State Bureau of Investigation.

Session Laws 1979, 2nd Sess., c. 1272, s. 5, provides: "This act is effective upon ratification and shall apply to persons injured or contracting an occupational disease on or after January 1, 1981."

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so

directed by the Governor. Such investigation, however, shall in no wise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c).

All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that all records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund. (1937, c. 349, s. 6; 1947, c. 280; 1965, c. 772; 1973, c. 47, s. 2; 1981, c. 822, s. 2.)

Effect of Amendments. — The 1981 amendment inserted "of" following "attempted arson" and "or arson" in the last sentence of the first

paragraph and added at the end of that sentence the language beginning "or any assault upon."

§ 114-19.1. Fees for performing certain background investigations.

When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this subsection shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court.

Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19 and other applicable statutes. (1979, c. 816; 1981, c. 832, s. 1.)

Editor's Note. — Session Laws 1979, c. 816, s. 2, makes this section effective July 1, 1979.

Effect of Amendments. — The 1981 amend-

ment added "or as an officer of the court" in the last sentence of the second paragraph.

§ 114-20.1. Authority to designate areas for protection of public officials.

(a) The Attorney General is authorized to designate buildings and grounds which constitute temporary residences or temporary offices of any public official being protected under authority of G.S. 114-20, or any area that will be visited by any such official, a public building or facility during the time of such use.

(b) The Attorney General or the Director of the State Bureau of Investigation may, with the consent of the official to be protected, make rules governing ingress to or egress from such buildings, grounds or areas designated under this section. (1981, c. 499, s. 1.)

Chapter 115.

Elementary and Secondary Education.

§§ 115-1 to 115-410: Repealed by 1981, c. 423, s. 1, effective July 1, 1981.

Editor's Note. — This Chapter was effective July 1, 1981, and has been recodified rewritten by Session Laws 1981, c. 423, s. 1, as Chapter 115C.

Effect of Amendments. — The 1981 amendments amended "of" following "attempted murder" and "or arson" in the last sentence of the first

paragraph and added at the end of that paragraph the language beginning "or any assault upon."

§ 114-19.1. Fees for performing certain background investigations.

When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this subsection shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be deducted for the support of the State Bureau of Investigation.

As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected or accused of or convicted of a criminal offense. The term also includes extending or suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court.

Chapter 115A.

Community Colleges, Technical Institutes, and Industrial Education Centers.

§§ 115A-1 to 115A-42: Repealed by Session Laws 1979, c. 462, s. 1.

Cross References. — For present provisions concerning community colleges and technical institutes, see Chapter 115D.

Chapter 115C.

Elementary and Secondary Education.

SUBCHAPTER I. GENERAL PROVISIONS.

Article 1.

Definitions and Preliminary Provisions.

Sec.

- 115C-1. General and uniform system of schools.
- 115C-2. Administrative procedure.
- 115C-3. Access to information and public records.
- 115C-4. Open meetings law.
- 115C-5. Definitions.
- 115C-6 to 115C-9. [Reserved.]

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

Article 2.

State Board of Education.

- 115C-10. Appointment of Board.
- 115C-11. Organization and internal procedures of Board.
- 115C-12. Powers and duties of the Board generally.
- 115C-13 to 115C-17. [Reserved.]

Article 3.

Department of Public Instruction.

- 115C-18. Election of Superintendent of Public Instruction.
- 115C-19. Chief administrative officer of the State Board of Education.
- 115C-20. Office and salary.
- 115C-21. Powers and duties generally.
- 115C-22 to 115C-26. [Reserved.]

Article 4.

Office of the Controller.

- 115C-27. Appointment of controller; salary.
- 115C-28. Fiscal affairs of the Board defined.
- 115C-29. Controller's powers and duties generally.
- 115C-30 to 115C-34. [Reserved.]

Article 5.

Local Boards of Education.

- 115C-35. How constituted.
- 115C-36. Designation of board.
- 115C-37. Election of board members.
- 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.
- 115C-38. Compensation of board members.

Sec.

- 115C-39. Removal of board members.
- 115C-40. Board a body corporate.
- 115C-41. Organization of board.
- 115C-42. Liability insurance and immunity.
- 115C-43. Defense of board of education members and employees.
- 115C-44. Suits and actions.
- 115C-45. Judicial functions of board.
- 115C-46. Powers of local boards to regulate parking of motor vehicles.
- 115C-47. Powers and duties generally.
- 115C-48. Penalties for certain conduct.
- 115C-49 to 115C-53. [Reserved.]

Article 6.

School Committees.

- 115C-54. Eligibility and oath of office; holding other offices.
- 115C-55. Appointment; number of members; terms; vacancies; advisory council.
- 115C-56. Organization of school committee; meetings.
- 115C-57. How to employ principals, teachers, janitors and maids.
- 115C-58. Committee's responsibility as to school property.
- 115C-59. Removal of committeemen for cause.
- 115C-60 to 115C-64. [Reserved.]

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.

Article 7.

Organization of Schools.

- 115C-65. State divided into districts.
- 115C-66. Administrative units classified.
- 115C-67. Merger of units in same county.
- 115C-68. Merger of units in adjoining counties.
- 115C-69. Types of districts defined.
- 115C-70. Creation and modification of school districts by State Board.
- 115C-71. Districts formed from portions of contiguous counties.
- 115C-72. Consolidation of districts and discontinuance of schools.
- 115C-73. Enlarging tax districts and city units by permanently attaching contiguous property.
- 115C-74. School system defined.
- 115C-75. Recommended school classification.
- 115C-76 to 115C-80. [Reserved.]

SUBCHAPTER IV. EDUCATION
PROGRAM.

Article 8.

General Education.

Part 1. Courses of Study.

- Sec.
115C-81. Required curriculum.
115C-82. Maximum class size.
115C-83. Observance of special days.

Part 2. Calendar.

- 115C-84. Length of school day, month, and term; Veterans Day.

Part 3. Textbooks.

- 115C-85. Textbook needs are determined by course of study.
115C-86. State Board of Education to select and adopt textbooks.
115C-87. Appointment of Textbook Commission.
115C-88. Commission to evaluate books offered for adoption.
115C-89. Selection of textbooks by Board.
115C-90. Adoption of textbooks and contracts with publishers.
115C-91. Continuance and discontinuance of contracts with publishers.
115C-92. Procedure for change of textbook.
115C-93. Advice from and suits by Attorney General.
115C-94. Publishers to register.
115C-95. Sale of books at lower price reduces price to State.
115C-96. Powers and duties of the State Board of Education in regard to textbooks.
115C-97. State Board of Education authorized to discontinue handling supplementary and library books.
115C-98. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.
115C-99. Legal custodians of books furnished by State.
115C-100. Rental fees for textbooks prohibited; damage fees authorized.
115C-101. Duties and authority of superintendents of local school administrative units.
115C-102. Right to purchase.

Part 4. Fees.

- 115C-103. Fees.

Part 5. Interstate Compact on Education.

- 115C-104. Enactment of Compact.
115C-105. North Carolina Education Council; bylaws.

Article 9.

Special Education.

Part 1. State Policy.

Sec.

- 115C-106. Policy.
115C-107. Children can learn.
115C-108. Definition of special education and related services.
115C-109. Definition of children with special needs.
115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

Part 2. Nondiscrimination in Education.

- 115C-111. Free appropriate education for all children with special needs.
115C-112. Disciplinary suspensions.
115C-113. Diagnosis and evaluation; individualized education program.
115C-114. Records; privacy and expunction.
115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.

Part 3. Appeals.

- 115C-116. Exceptional children; special program; dissatisfaction with assignment; right to appeal.

Part 4. Regional Educational Training Center.

- 115C-117. Creation.
115C-118. Functions.
115C-119. Organization of centers.
115C-120. Rules and regulations.

Part 5. Council on Educational Services for Exceptional Children.

- 115C-121. Establishment; organization; powers and duties.

Part 6. Range of Services Available.

- 115C-122. Early childhood development program; evaluation and placement of children.

Part 7. State Schools for Hearing-Impaired Children.

- 115C-123. Establishment; operations.
115C-124. Pupils admitted; education.
115C-125. Free textbooks and State purchase and rental system.
115C-126. Agreements with local governing authorities.
115C-126.1. Fees for athletic programs; appeal.

Part 8. State School for Sight-Impaired Children.

- 115C-127. Incorporation, name and management.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

- 115C-128. Admission of pupils; how admission obtained.
- 115C-129. [Reserved.]
- 115C-130. Admission of pupils from other states.
- 115C-131. Department of Human Resources may confer diplomas.
- 115C-132. State Treasurer is ex officio treasurer of institution.
- 115C-133. When clothing, etc., for pupils paid for by county.

Part 9. Central Orphanage of North Carolina.

- 115C-134. Creation; powers.
- 115C-135. Directors; selection, self-perpetuation, management of corporation.
- 115C-136. Board of trustees; appropriations; treasurer; board of audit.
- 115C-137. Training of orphans.
- 115C-138. Control over orphans.

Part 10. State and Local Relationships.

- 115C-139. Interlocal cooperation.
- 115C-140. Contracts with private service-providers.
- 115C-140.1. Cost of education of children in group homes, foster homes, etc.

Part 11. Rules and Regulations.

- 115C-141. Board rules and regulations.

Part 12. Nonreduction Provision.

- 115C-142. Nonreduction.

Part 13. Budget Analysis and Departmental Funding.

- 115C-143. Budget analysis.
- 115C-144. Departmental requests.
- 115C-145. Allocation of federal funds.
- 115C-146 to 115C-150. [Reserved.]

Article 10.

Vocational Education.

Part 1. Vocational Education Programs.

- 115C-151. Statement of purpose.
- 115C-152. Definitions.
- 115C-153. Administration of vocational education.
- 115C-154. Duties of the State Board of Education.
- 115C-155. Acceptance of benefits of federal vocational acts.
- 115C-156. State funds for vocational education.
- 115C-157. Responsibility of local boards of education.
- 115C-158. Federal funds division.

Part 2. Vocational Education Production Work Activities.

- 115C-159. Statement of purpose.

Sec.

- 115C-160. Definitions.
- 115C-161. Duties of the State Board of Education.
- 115C-162. Use of proceeds derived from production work.
- 115C-163. Acquisition of land for agricultural education instructional programs.
- 115C-164. Building trades training.
- 115C-165. Advisory committee on construction projects.

Part 3. Eye Safety Devices Required.

- 115C-166. Eye protection devices required in certain courses.
- 115C-167. Visitors to wear eye safety devices.
- 115C-168. "Industrial-quality eye protective devices" defined.
- 115C-169. Corrective-protective devices.
- 115C-170 to 115C-174. [Reserved.]

Article 11.

High School Competency Testing.

- 115C-175. Purpose.
- 115C-176. Competency Test Commission.
- 115C-177. Duties of the Commission.
- 115C-178. Administration of the test.
- 115C-179. Duties of Superintendent of Public Instruction.
- 115C-180. Duties of State Board of Education.
- 115C-181. Duties of local school boards.
- 115C-182. Public records exception.
- 115C-183. Provisions for nonpublic schools.
- 115C-184. Remediation funds.
- 115C-185 to 115C-188. [Reserved.]

Article 12.

Statewide Testing Program.

- 115C-189. Purpose.
- 115C-190. State Board of Education responsibilities.
- 115C-191. Appointment of Testing Commission.
- 115C-192. Evaluation and selection of tests.
- 115C-193. Duties of State Board of Education.
- 115C-194. Duties of Superintendent of Public Instruction.
- 115C-195. Duties of local boards of education.
- 115C-196. Public records exception.
- 115C-197. Provisions for nonpublic schools.
- 115C-198 to 115C-202. [Reserved.]

Article 13.

Community Schools Act.

- 115C-203. Title of Article.
- 115C-204. Purpose of Article.
- 115C-205. Definitions.
- 115C-206. State Board of Education; duties; responsibilities.
- 115C-207. Authority and responsibility of local boards of education.

Sec.

115C-208. Community schools advisory councils; duties; responsibilities; membership.

115C-209. Community schools coordinators.

115C-210 to 115C-214. [Reserved.]

Article 14.

Driver Education.

115C-215. Instruction in driver training and safety education.

115C-216. Boards of education required to provide courses in operation of motor vehicles.

115C-217 to 115C-221. [Reserved.]

Article 15.

North Carolina School of Science and Mathematics.

115C-222. Establishment of North Carolina School of Science and Mathematics.

115C-223. Board of Trustees; appointment; terms of office.

115C-224. Budget; preparation; submission.

115C-225 to 115C-229. [Reserved.]

Article 16.

Optional Programs.

Part 1. Educational Research.

115C-230. Special projects.

Part 2. Adult Education.

115C-231. Adult education programs; tuition; limitation of enrollment of pupils over 21.

Part 3. Summer Schools.

115C-232. Local financing of summer schools.

115C-233. Operation of summer schools.

115C-234 to 115C-238. [Reserved.]

Article 17.

Supporting Services.

Part 1. Transportation.

115C-239. Authority of local boards of education.

115C-240. Authority and duties of State Board of Education.

115C-241. Assignment of school buses to schools.

115C-242. Use and operation of school buses.

115C-243. Use of school buses by senior citizen groups.

115C-244. Assignment of pupils to school buses.

115C-245. School bus drivers; monitors; safety assistants.

115C-246. School bus routes.

115C-247. Purchase of activity buses by local boards.

Sec.

115C-248. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.

115C-249. Purchase and maintenance of school buses, materials and supplies.

115C-250. Authority to expend funds for transportation of children with special needs.

115C-251. Transportation supervisors.

115C-252. Aid in lieu of transportation.

115C-253. Contracts for transportation.

115C-254. Use of school buses by State guard or national guard.

115C-255. Liability insurance and waiver of immunity as to certain acts of bus drivers.

115C-256. School bus drivers under Workers' Compensation Act.

115C-257. Attorney General to pay claims.

115C-258. Provisions regarding payment.

115C-259. Claims must be filed within one year.

115C-260, 115C-261. [Repealed.]

115C-262. Liability insurance and tort liability.

Part 2. Food Service.

115C-263. Required provision of services.

115C-264. Operation.

Part 3. Library/Media Personnel.

115C-265. Rules and regulations for distribution of library/media personnel funds; employment of personnel.

115C-266 to 115C-270. [Reserved.]

SUBCHAPTER V. PERSONNEL.

Article 18.

Superintendents.

115C-271. Selection by local board of education, term of office.

115C-272. Residence, oath of office, and salary of superintendent.

115C-273. Salary schedule for superintendents.

115C-274. Removal for cause.

115C-275. Vacancies in office of superintendent.

115C-276. Duties of superintendent.

115C-277. Office, equipment, and clerical assistance to be provided by board.

115C-278. Assistant superintendent and associate superintendent.

115C-279 to 115C-283. [Reserved.]

Article 19.

Principals and Supervisors.

115C-284. Method of selection and requirements.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

- 115C-285. Salary.
- 115C-286. Rules for conduct of principals and supervisors.
- 115C-287. Tenure as principal or supervisor.
- 115C-288. Powers and duties of principal.
- 115C-289. Assignment of principal's duties to assistant or acting principal.
- 115C-290 to 115C-294. [Reserved.]

Article 20.

Teachers.

- 115C-295. Minimum age and certificate prerequisites.
- 115C-296. Board sets certification requirements.
- 115C-297. Local board of education approves certificate.
- 115C-298. Colleges may assist teachers in certification.
- 115C-299. Hiring of teachers.
- 115C-300. In-service training.
- 115C-301. Allocation of teachers; class size.
- 115C-302. Salary and vacation.
- 115C-303. Withholding of salary.
- 115C-304. Teacher tenure.
- 115C-305. Appeals to board of education and to superior court.
- 115C-306. Reducing employment term of occupational education teacher.
- 115C-307. Duties of teachers.
- 115C-308. Rules for teacher's conduct.
- 115C-309. Student teachers.
- 115C-310 to 115C-314. [Reserved.]

Article 21.

Other Employees.

- 115C-315. Hiring of school personnel.
- 115C-316. Salary and vacation.
- 115C-317. Penalty for making false reports or records.
- 115C-318 to 115C-322. [Reserved.]

Article 22.

General Regulations.

Part 1. Health Certificate.

- 115C-323. Employee health certificate.

Part 2. Payment of Wages after Death of Employee.

- 115C-324. Disposition of payment due employees at time of death.

Part 3. Principal and Teacher Employment Contracts.

- 115C-325. System of employment for public school teachers.
- 115C-326. Uniform performance standards and criteria for professional employees.

Part 4. Personnel Administration Commission for Public School Employees.

Sec.

- 115C-327. Commission established; purpose.
- 115C-328. Commission membership; meetings; compensation.
- 115C-329. Responsibilities of the Commission.

Part 5. Employment of Handicapped.

- 115C-330. Employment of handicapped.
- 115C-331 to 115C-335. [Reserved.]

Article 23.

Employment Benefits.

- 115C-336. Sick leave.
- 115C-337. Workers' compensation for school employees.
- 115C-338. Salaries for employees injured during an episode of violence.
- 115C-339. Retirement plan.
- 115C-340. Health insurance.
- 115C-341. Annuity contracts.
- 115C-342. Group insurance and credit unions.
- 115C-343. Payroll savings plan for purchase of United States bonds.
- 115C-344 to 115C-348. [Reserved.]

Article 24.

Interstate Agreement on Qualifications of Educational Personnel.

- 115C-349. Purpose, findings, and policy.
- 115C-350. Definitions.
- 115C-351. Interstate educational personnel contracts.
- 115C-352. Approved and accepted programs.
- 115C-353. Interstate cooperation.
- 115C-354. Agreement evaluation.
- 115C-355. Other arrangements.
- 115C-356. Effect and withdrawal.
- 115C-357. Construction and severability.
- 115C-358. Designated state official.
- 115C-359 to 115C-363. [Reserved.]

SUBCHAPTER VI. STUDENTS.

Article 25.

Admission and Assignment of Students.

- 115C-364. Admission requirements.
- 115C-365. Children at orphanages admitted to public schools.
- 115C-366. Assignment of student to a particular school.
- 115C-366.1. Local boards of education; tuition charges.
- 115C-366.2. Applicability to certain persons.
- 115C-367. Assignment on certain bases prohibited.
- 115C-368. Notice of assignment.
- 115C-369. Application for reassignment; notice of disapproval; hearing before board.

Sec.

- 115C-370. Appeal from board's decision.
- 115C-371. Assignment to special education programs.
- 115C-372. Assignment to school bus.
- 115C-373 to 115C-377. [Reserved.]

Article 26.

Attendance.

Part 1. Compulsory Attendance.

- 115C-378. Children between seven and 16 required to attend.
- 115C-379. Method of enforcement.
- 115C-380. Penalty for violation.
- 115C-381. Attendance counselors; reports; prosecutions.
- 115C-382. Investigation of indigency.
- 115C-383. Attendance of deaf and blind children.

Part 2. Student Records and Fees.

- 115C-384. Student records and fees.
- 115C-385 to 115C-389. [Reserved.]

Article 27.

Discipline.

- 115C-390. School personnel may use reasonable force.
- 115C-391. Suspension or expulsion of pupils.
- 115C-392. Appeal of disciplinary measures.
- 115C-393 to 115C-397. [Reserved.]

Article 28.

Student Liability.

- 115C-398. Damage to school buildings, furnishings, textbooks.
- 115C-399. Trespass on or damage to school bus.

Article 29.

Protective Provisions and Maintenance of Student Records.

- 115C-400. School personnel to report child abuse.
- 115C-401. School counseling inadmissible evidence.
- 115C-402. Student records; maintenance; contents.
- 115C-403 to 115C-407. [Reserved.]

SUBCHAPTER VII. FISCAL AFFAIRS.

Article 30.

Financial Powers of the State Board of Education.

- 115C-408. Funds under control of the State Board of Education.
- 115C-409. Power to accept federal funds and aid.
- 115C-410. Power to accept gifts and grants.

Sec.

- 115C-411. Authority to invest school funds.
- 115C-412. Power to purchase at mortgage sales.
- 115C-413. Power to adjust debts.
- 115C-414. State Board as successor to powers of abolished commissions and boards.
- 115C-415. Report on operation of State Literary Fund.
- 115C-416. Power to allot funds for teachers and other personnel.
- 115C-417 to 115C-421. [Reserved.]

Article 31.

The School Budget and Fiscal Control Act.

Part 1. General Provisions.

- 115C-422. Short title.
- 115C-423. Definitions.
- 115C-424. Uniform system; conflicting laws and local acts superseded.

Part 2. Budget.

- 115C-425. Annual balanced budget resolution.
- 115C-426. Uniform budget format.
- 115C-427. Preparation and submission of budget and budget message.
- 115C-428. Filing and publication of the budget; budget hearing.
- 115C-429. Approval of budget; submission to county commissioners; commissioners' action on budget.
- 115C-430. Apportionment of county appropriations among local school administrative units.
- 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.
- 115C-432. The budget resolution; adoption; limitations; tax levy; filing.
- 115C-433. Amendments to the budget resolution; budget transfers.
- 115C-434. Interim budget.

Part 3. Fiscal Control.

- 115C-435. School finance officer.
- 115C-436. Duties of school finance officer.
- 115C-437. Allocation of revenues to the local school administrative unit by the county.
- 115C-438. Provision for disbursement of State money.
- 115C-439. Facsimile signatures.
- 115C-440. Accounting system.
- 115C-441. Budgetary accounting for appropriations.
- 115C-442. Fidelity bonds.
- 115C-443. Investment of idle cash.
- 115C-444. Selection of depository; deposits to be secured.
- 115C-445. Daily deposits.

GENERAL STATUTES OF NORTH CAROLINA

Sec.

- 115C-446. Semiannual reports on status of deposits and investments.
- 115C-447. Annual independent audit.
- 115C-448. Special funds of individual schools.
- 115C-449. Proceeds of insurance claims.
- 115C-450. School food services.
- 115C-451. Reports to State Board of Education.
- 115C-452. Fines and forfeitures.
- 115C-453 to 115C-457. [Reserved.]

Article 32.

Loans from State Literary Fund.

- 115C-458. Loans by State Board from State Literary Fund.
- 115C-459. Terms of loans.
- 115C-460. How secured and paid.
- 115C-461. Loans by county board to school districts.
- 115C-462. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission.
- 115C-463. Issuance of bonds as part of general refunding plan.
- 115C-464. Validating certain funding and refunding notes of counties.
- 115C-465. Special appropriation from fund.
- 115C-466. Loans not granted in accordance with G.S. 115C-458.
- 115C-467. Pledge of nontax revenues to repayment of loans from State Literary Fund.
- 115C-468 to 115C-472. [Reserved.]

Article 33.

Assumption of School District Indebtedness by Counties.

- 115C-473. Method of assumption; validation of proceedings.
- 115C-474. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian.
- 115C-475. Allocation to district bonds of taxes collected.
- 115C-476 to 115C-480. [Reserved.]

Article 34.

Refunding and Funding Bonds of School Districts.

- 115C-481. School district defined.
- 115C-482. Continuance of district until bonds are paid.
- 115C-483. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.
- 115C-484. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.

Sec.

- 115C-485 to 115C-489. [Reserved.]

Article 35.

Voluntary Endowment Fund for Public Schools.

- 115C-490. Creation of endowment funds; administration.
- 115C-491. Boards of trustees public corporations; powers and authority generally; investments.
- 115C-492. Expenditure of funds; pledges.
- 115C-493. When only income from fund expended.
- 115C-494. Property and income of board of trustees exempt from State taxation.
- 115C-495 to 115C-499. [Reserved.]

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.

Article 36.

Voted Tax Supplements for School Purposes.

- 115C-500. Superintendents must furnish boundaries of special taxing districts.
- 115C-501. Purposes for which elections may be called.
- 115C-502. Maximum rate and frequency of elections.
- 115C-503. Who may petition for election.
- 115C-504. Necessary information in petitions.
- 115C-505. Boards of education must consider petitions.
- 115C-506. Action of board of county commissioners or governing body of municipality.
- 115C-507. Rules governing elections.
- 115C-508. Effective date; levy of taxes.
- 115C-509. Conveyance of school property upon enlargement of city administrative unit.
- 115C-510. Elections in districts created from portions of contiguous counties.
- 115C-511. Levy and collection of taxes.
- 115C-512 to 115C-516. [Reserved.]

SUBCHAPTER IX. PROPERTY.

Article 37.

School Sites and Property.

- 115C-517. Acquisition of sites.
- 115C-518. Sale, exchange or lease of school property; easement and rights-of-way.
- 115C-519. Deeds to property.
- 115C-520. Vehicles owned by boards of education.
- 115C-521. Erection of school buildings.
- 115C-522. Provision of equipment for buildings.

Sec.

- 115C-523. Care of school property.
- 115C-524. Repair of school property.
- 115C-525. Fire prevention.
- 115C-526. Reward for information leading to arrest of persons damaging school property.
- 115C-527. Use of schools and other public buildings for political meetings.
- 115C-528 to 115C-532. [Reserved.]

Article 38.

State Insurance of Public School Property.

- 115C-533. Duty of State Board to operate insurance system.
- 115C-534. Duty to insure property.
- 115C-535. Authority and rules for organization of system.
- 115C-536. Public School Insurance Fund; decrease of premiums when fund reaches five percent (5%) of total insurance in force.
- 115C-537. Insurance of property by local boards; notice of election to insure and information to be furnished; outstanding policies.
- 115C-538. Inspections of insured public school properties.
- 115C-539. Information to be furnished prior to insuring in Fund; providing for payment of premiums.
- 115C-540. Determination and adjustment of premium rates; certificate as to insurance carried; no lapse; notice as to premiums required, and payment thereof.
- 115C-541. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local school administrative units; disbursement of funds.
- 115C-542. Maintenance of inspection and engineering service; cancellation of insurance.
- 115C-543 to 115C-546. [Reserved.]

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

Article 39.

Nonpublic Schools.

Part 1. Private Church Schools and Schools of Religious Charter.

- 115C-547. Policy.
- 115C-548. Attendance; health and safety regulations.
- 115C-549. Standardized testing requirements.

Sec.

- 115C-550. High school competency testing.
- 115C-551. Voluntary participation in the State programs.
- 115C-552. New school notice requirements; termination.
- 115C-553. Duly authorized representative.
- 115C-554. Requirements exclusive.

Part 2. Qualified Nonpublic Schools.

- 115C-555. Qualification of nonpublic schools.
- 115C-556. Attendance; health and safety regulations.
- 115C-557. Standardized testing requirements.
- 115C-558. High school competency testing.
- 115C-559. Voluntary participation in the State programs.
- 115C-560. New school notice requirements; termination.
- 115C-561. Duly authorized representative.
- 115C-562. Requirements exclusive.
- 115C-563 to 115C-567. [Reserved.]

Article 40.

Proprietary Schools.

- 115C-568. Definitions.
- 115C-569. Exemptions.
- 115C-570. State Board of Education to administer Article; issuance of diplomas by schools; investigation and inspection; regulations and standards.
- 115C-571. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.
- 115C-572. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.
- 115C-573. Commercial Education Fund established; refund of fees.
- 115C-574. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.
- 115C-575. Private schools advisory committee; appointment; duties.
- 115C-576. Execution of bond required; filing and recording; actions upon bond.
- 115C-577. Operating school without license or bond made misdemeanor.
- 115C-578. Contracts with unlicensed schools and evidences of indebtedness made null and void.
- 115C-579 to 115C-583. [Reserved.]

SUBCHAPTER I. GENERAL PROVISIONS.

ARTICLE 1.

*Definitions and Preliminary Provisions.***§ 115C-1. General and uniform system of schools.**

A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of the Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person 18 years of age, or over, who has not completed a standard high school course of study. There shall be operated in every local school administrative unit a uniform school term of nine months, without the levy of a State ad valorem tax therefor. (1955, c. 1372, art. 1, s. 1; 1963, c. 448, s. 24; 1971, c. 704, s. 1; c. 1231, s. 1; 1981, c. 423, s. 1.)

Editor's Note. — This Chapter is former Chapter 115, as rewritten by Session Laws 1981, c. 423, s. 1, effective July 1, 1981, and recodified. Where appropriate, the historical citations to the sections in the former Chapter have been added to corresponding sections in the Chapter as rewritten and recodified.

Property Interest Entitles Students to Due Process. — Students in North Carolina have legitimate claims of entitlement to a pub-

lic education, since by this section, a uniform system of free public schools is provided throughout the state and students are required to attend. Therefore, students have a property interest in public education and would be entitled to due process in connection with suspension from school. *Pegram v. Nelson*, 469 F. Supp. 1134 (M.D.N.C. 1979) (decided under former § 115-1).

§ 115C-2. Administrative procedure.

All action of agencies taken pursuant to this Chapter, as agency is defined in G.S. 150A-2, is subject to the requirements of the Administrative Procedure Act, Chapter 150A of the General Statutes. (1981, c. 423, s. 1.)

§ 115C-3. Access to information and public records.

Except as otherwise provided in this Chapter, access to information gathered and public records made pursuant to the provisions of this Chapter must be in conformity with the requirements of Chapter 132 of the General Statutes. (1981, c. 423, s. 1.)

§ 115C-4. Open meetings law.

Meetings of governmental bodies held pursuant to the provisions of this Chapter must be in conformity with the requirements of Article 33C of Chapter 143 of the General Statutes. (1981, c. 423, s. 1.)

§ 115C-5. Definitions.

As used in this Chapter unless the context requires otherwise:

(a) The State Board of Education may be referred to as the "Board" or as the "State Board."

(b) The governing board of a city administrative unit is "the city board of education."

(c) The governing board of a county administrative unit is "the county board of education."

(d) The governing board of the school district is "the district committee."

(e) "Local board" or "board" means a city board of education, county board of education, or a city-county board of education.

(f) "Local school administrative unit" means a subdivision of the public school system which is governed by a local board of education. It may be a city school administrative unit, a county school administrative unit, or a city-county school administrative unit.

(g) The executive head of a school shall be called "principal."

(h) The executive officer of a local school administrative unit shall be called "superintendent." "Superintendent" means the superintendent of schools of a public school system or, in his absence, the person designated to fulfill his functions.

(i) "Supervisor" means a person paid on the supervisor salary schedule who supervises the instructional program in one or more schools and is under the immediate supervision of the superintendent or his designee.

(j) The term "tax-levying authority" means the board of county commissioners of the county or counties in which an administrative unit is located or such other unit of local government as may be granted by local act authority to levy taxes on behalf of a local school administrative unit. (1955, c. 664; c. 1372, art. 1, ss. 8, 9; 1965, c. 584, s. 2; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1975, c. 437, s. 10; 1979, c. 864, s. 2; 1981, c. 423, s. 1.)

§§ 115C-6 to 115C-9: Reserved for future codification purposes.

SUBCHAPTER II. ADMINISTRATIVE ORGANIZATION OF STATE AND LOCAL EDUCATION AGENCIES.

ARTICLE 2.

State Board of Education.

§ 115C-10. Appointment of Board.

The State Board of Education shall consist of the Lieutenant Governor, the State Treasurer, and 11 members appointed by the Governor, subject to confirmation by the General Assembly in joint session. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts and three shall be appointed as members at large. Appointments shall be for terms of eight years and shall be made in four classes. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

The Governor shall transmit to the presiding officers of the Senate and the House of Representatives, on or before the sixtieth legislative day of the General Assembly, the names of the persons appointed by him and submitted to the General Assembly for confirmation; thereafter, pursuant to joint resolution, the Senate and the House of Representatives shall meet in joint session for consideration of an action upon such appointments. (1955, c. 1372, art. 1, s. 2; 1971, c. 704, s. 2; 1981, c. 423, s. 1.)

§ 115C-11. Organization and internal procedures of Board.

(a) Presiding Officer. — The State Board of Education shall elect from its membership a chairman and vice-chairman. A majority of the Board shall constitute a quorum for the transaction of business. Per diem and expenses of the appointive members of the Board shall be provided by the General Assembly. The chairman of the Board shall preside at all meetings of the Board. In the absence of the chairman, the vice-chairman shall preside; in the absence of both the chairman and the vice-chairman, the Board shall name one of its own members as chairman pro tempore.

(b) Regular Meetings of Board. — The regular meetings of the Board shall be held each month on a day certain, as determined by the Board. The Board shall determine the hour of the meeting, which may be adjourned from day to day, or to a day certain, until the business before the Board has been completed.

(c) Special Meetings. — Special meetings of the Board may be set at any regular meeting or may be called by the chairman or by the secretary upon the approval of the chairman: Provided, a special meeting shall be called by the chairman upon the request of any five members of the Board. In case of regular meetings and special meetings, the secretary shall give notice to each member, in writing, of the time and purpose of the meeting, by letter directed to each member at his home post-office address. Such notice must be deposited in the Raleigh Post Office at least three days prior to the date of meeting.

(d) Voting. — No voting by proxy shall be permitted. Except in voting on textbook adoptions, all voting shall be viva voce unless a record vote or secret ballot is demanded by any member, and a majority of those present and voting shall be necessary to carry a motion.

(e) Voting on Adoption of Textbooks. — A majority vote of the whole membership of the Board shall be required to adopt textbooks, and a roll call vote shall be had on each motion for such adoption or adoptions. A record of all such votes shall be kept in the minute book.

(f) Committees. — The Board may create from its membership such committees as it deems necessary to facilitate its business. The chairman of the Board shall with approval of the majority of the Board appoint members to the several committees authorized by the Board and to any additional committees which the chairman may deem to be appropriate.

(g) Record of Proceedings. — All of the proceedings of the Board shall be recorded in a well-bound and suitable book, which shall be kept in the office of the Superintendent of Public Instruction, and open to public inspection.

(h) Rules and Regulations. — The Board shall adopt reasonable rules and regulations not inconsistent herewith, to govern its proceedings which the Board may amend from time to time, which rules and regulations shall become effective when filed as provided by law: Provided, however, a motion to suspend the rules so adopted shall require a consent of two thirds of the members. The rules and regulations shall include, but not be limited to, clearly defined procedures for electing the officers of the State Board referred to in G.S. 115C-11(a), fixing the term of said officers, specifying how the voting shall be carried out, and establishing a date when the first election shall be held. (1955, c. 1372, art. 2, s. 1; 1959, c. 573, s. 19; 1971, c. 704, s. 3; 1975, c. 699, s. 1; 1981, c. 423, s. 1.)

§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The powers and duties of the State Board of Education are defined as follows:

- (1) Financial Powers. — The financial powers of the Board are set forth in Article 30 of this Chapter.

- (2) **Power to Divide the Administrative Units into Districts.** — The Board shall have power to create in any county administrative units a convenient number of school districts, upon the recommendation of the county board of education. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The Board may modify the district organization in any administrative unit when it is deemed necessary for the economical and efficient administration and operation of the State school system, when requested to do so by the appropriate local board of education.
- (3) **Divisions of Functions of Board.** — The Board shall divide its duties into two separate functions, insofar as may be practicable, as follows:
- a. All those matters relating to the supervision and administration of the public school system, except the supervision and management of the fiscal affairs of the Board, shall be under the direction of the Superintendent in his capacity as the constitutional administrative head of the public school system.
 - b. All those matters relating to the supervision and administration of the fiscal affairs of the public school fund committed to the administration of the State Board of Education shall be under the supervision and management of the controller.
- (4) **Appointment of Controller.** — The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board and who, under the direction of the Board, shall have supervision and management of the fiscal affairs of the Board.
- (5) **Apportionment of Funds.** — The Board shall have authority to apportion and equalize over the State all State school funds and all federal funds granted to the State for assistance to educational programs administered within or sponsored by the public school system of the State.
- (6) **Power to Demand Refund for Inaccurate Apportionment Due to False Attendance Records.** — When it shall be found by the State Board of Education that inaccurate attendance records have been filed with the State Board of Education which resulted in an excess allotment of funds for teacher salaries in any school unit in any school year, the school unit concerned may be required to refund to the State Board the amount allotted to said unit in excess of the amount an accurate attendance record would have justified.
- (7) **Power to Alter the Boundaries of City School Administrative Units and to Approve Agreements for the Consolidation and Merger of School Administrative Units Located in the Same County.** — The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.
- (8) **Power to Make Provisions for Sick Leave.** — The Board shall provide for a minimum of five days per school year term of sick leave with pay for all public school employees and shall promulgate rules and regulations providing for necessary substitutes on account of said sick leave. The pay for a substitute shall be fixed by the Board. The Board may provide to each local school administrative unit not exceeding one percent (1%) of the cost of instructional services for the purpose of

providing substitute teachers for those on sick leave as authorized by law or by regulations of the Board, but not exceeding the provisions made for other State employees.

- (9) Miscellaneous Powers and Duties. — All the powers and duties exercised by the State Board of Education shall be in conformity with the Constitution and subject to such laws as may be enacted from time to time by the General Assembly. Among such duties are:
- a. To certify and regulate the grade and salary of teachers and other school employees.
 - b. To adopt and supply textbooks.
 - c. To adopt a standard course of study upon recommendation of the Superintendent of Public Instruction: Provided, however, that in the event the Superintendent does not recommend a standard course of study satisfactory to the Board, the Board may cause an independent professional study to be made, with such assistance as it may deem necessary, to the end that a standard course of study appropriate to the needs of the children of the State shall be recommended to the Board for adoption; whereupon the Board shall require a public hearing to be held on the question of the adoption of the standard course of study thus proposed and it shall thereafter adopt the recommendations with such changes as the Board may deem appropriate, which shall be required as the minimal program of every public school in the State. The standard course of study thus established shall be reviewed by the Board biennially.
 - d. To formulate rules and regulations for the enforcement of the compulsory attendance law.
 - e. To manage and operate a system of insurance for public school property, as provided in Article 38 of this Chapter.

In making substantial policy changes in administration, curriculum, or programs the Board should conduct hearings throughout the regions of the State, whenever feasible, in order that the public may be heard regarding these matters.

- (10) Power to Provide for Programs or Projects in the Cultural and Fine Arts Areas. — The Board is authorized and empowered, in its discretion, to make provisions for special programs or projects of a cultural and fine arts nature for the enrichment and strengthening of educational opportunities for the children of the State.

For this purpose, the Board may use funds received from gifts or grants and, with the approval of the Director of the Budget, may use State funds which the Board may find available in any budget administered by the Board.

- (11) Power to Conduct Education Research. — The Board is authorized to sponsor or conduct education research and special school projects considered important by the Board for improving the public schools of the State. Such research or projects may be conducted during the summer months and involve one or more local school units as the Board may determine. The Board may use any available funds for such purposes.
- (12) Duty to Provide for Sports Medicine and Emergency Paramedical Program. — The State Board of Education is authorized and directed to develop a comprehensive plan to train and make available to the public schools personnel who shall have major responsibility for exercising preventive measures against sports related deaths and injuries and for providing sports medicine and emergency paramedical services for injuries that occur in school related activities. The plan shall include, but is not limited to, the training, assignment of responsibilities, and appropriate additional reimbursement for individuals participating in the program.

The State Board of Education is authorized and directed to develop an implementation schedule and a program funding formula that will enable each high school to have a qualified sports medicine and emergency paramedical program by July 1, 1984.

The State Board of Education is authorized and directed to establish minimum educational standards necessary to enable individuals serving as sports medicine and emergency paramedical staff to provide such services, including first aid and emergency life saving skills, to students participating in school activities.

- (13) **Power to Purchase Liability Insurance.** — The Board is authorized to purchase insurance to protect board members from liability incurred in the exercise of their duty as members of the Board.
- (14) **Duty to Provide Personnel Information to Local Boards.** — Upon request, the State Board of Education and the Department of Public Instruction shall furnish to any county or city board of education any and all available personnel information relating to certification, evaluation and qualification including, but not limited to, semester hours or quarterly hours completed, graduate work, grades, scores, etc., that are on that date in the files of the State Board of Education or Department of Public Instruction.
- (15) **Duty to Develop Noncertified Personnel Position Evaluation Descriptions.** — The Board is authorized and directed to develop position evaluation descriptions covering those positions in local school administrative units for which certification by the State Board of Education is not normally a prerequisite. The position evaluation descriptions required in this subdivision are to be used by local boards of education as the basis for assignment of noncertified employees to an appropriate pay grade in accordance with salary grades and ranges adopted by the State Board of Education. No appropriations are required by this subdivision.
- (16) **Power with Regard to Salary Schedules.** —
 - a. Support personnel refers to all public school employees who are not required by statute or regulation to be certified in order to be employed. The State Board of Education is authorized and empowered to adopt all necessary rules for full implementation of all schedules to the extent that State funds are made available for support personnel.
 - b. Salary schedules for the following public school support personnel shall be adopted by the State Board of Education: school finance officer, office support personnel, property and cost clerks, aides, maintenance supervisors, custodial personnel, and transportation personnel. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission.
 - c. Salary schedules for other support personnel, including but not limited to maintenance and school food service personnel, shall be adopted by the State Board of Education. The Board shall classify these support positions in terms of uniform pay grades included in the salary schedule of the State Personnel Commission. These schedules shall apply if the local board of education does not adopt a salary schedule of its own for personnel paid from other than State appropriation. (1955, c. 1372, art. 2, s. 2; art. 17, s. 6; art. 18, s. 2; 1957, c. 541, s. 11; 1959, c. 1294; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 584, s. 20.1; c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 236; c. 476, s. 138; c. 675; 1973, c. 686, s. 1; c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; c. 986; 1981, c. 423, s. 1.)

Cross References. — As to sick leave for public school employees, see § 115C-336.

§§ 115C-13 to 115C-17: Reserved for future codification purposes.

ARTICLE 3.

Department of Public Instruction.

§ 115C-18. Election of Superintendent of Public Instruction.

The Superintendent of Public Instruction shall be elected by the qualified voters of the State in 1972 and every four years thereafter at the same time and places as members of the General Assembly are elected. His term of office shall be four years and shall commence on the first day of January next after election and continue until his successor is elected and qualified.

If the office of the Superintendent of Public Instruction is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 30 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in Article III, Sec. 7 of the Constitution of North Carolina. When a vacancy occurs in the office and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office. Upon the occurrence of a vacancy in the office for any of the causes stated herein, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to Article III, Sec. 7 of the Constitution of North Carolina to fill the vacancy and is qualified.

The time of the election of the Superintendent of Public Instruction shall be in accordance with the provisions of Article 1 of Subchapter I of Chapter 163 of the General Statutes.

The election, term and induction into office of the Superintendent of Public Instruction shall be in accordance with the provisions of G.S. 147-4. (1981, c. 423, s. 1.)

§ 115C-19. Chief administrative officer of the State Board of Education.

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. (1955, c. 1372, art. 3, s. 1; 1971, c. 704, s. 5; 1981, c. 423, s. 1.)

§ 115C-20. Office and salary.

The Superintendent of Public Instruction shall keep his office in The Education Building in Raleigh, and his salary shall be the same as for Court of Appeals judges as set by the General Assembly in the Budget Appropriation Act. (1955, c. 1372, art. 3, s. 2; c. 1374; 1963, c. 1178, s. 2; 1967, c. 1130; c. 1237, s. 2; 1969, c. 1214, s. 2; 1971, c. 912, s. 2; 1973, c. 778, s. 2; 1975, 2nd Sess., c. 983, s. 17; 1977, c. 802, s. 42.15; 1981, c. 423, s. 1.)

§ 115C-21. Powers and duties generally.

(a) **Administrative Duties.** — It shall be the duty of the Superintendent of Public Instruction:

- (1) To organize and establish, subject to the approval of the State Board of Education, a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system. All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction shall be subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System.
- (2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.
- (3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.
- (4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.
- (5) To have under his direction, in his capacity as the constitutional administrative head of the public school system, all those matters relating to the supervision and administration of the public school system, except the supervision and management of the fiscal affairs of the Board.

(b) **Duties as Secretary to the State Board of Education.** — As secretary, under the direction of the Board, it shall be the duty of the Superintendent of Public Instruction:

- (1) To administer through the Department of Public Instruction the instructional policies established by the Board.
- (2) To keep the Board informed regarding developments in the field of public education.
- (3) To make recommendations to the Board with regard to the problems and needs of education in North Carolina.
- (4) To make available to the public schools a continuous program of comprehensive supervisory services.
- (5) To collect and organize information regarding the public schools, on the basis of which he shall furnish the Board such tabulations and reports as may be required by the Board.
- (6) To communicate to the public school administrators all information and instructions regarding instructional policies and procedures adopted by the Board.
- (7) To have custody of the official seal of the Board and to attest all deeds, leases, or written contracts executed in the name of the Board. All deeds of conveyance, leases, and contracts affecting real estate, title to which is held by the Board, and all contracts of the Board required to be in writing and under seal, shall be executed in the name of the Board by the chairman and attested by the secretary; and proof of the execution, if required or desired, may be had as provided by law for the proof of corporate instruments.

- (8) To attend all meetings of the Board and to keep the minutes of the proceedings of the Board in a well-bound and suitable book, which minutes shall be approved by the Board prior to its adjournment; and, as soon thereafter as possible, to furnish to each member of the Board and the controller a copy of said minutes.
- (9) To perform such other duties as the Board may assign to him from time to time. (1955, c. 1372, art. 2, s. 2; art. 3, ss. 3, 4; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, ss. 2, 3; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§§ 115C-22 to 115C-26: Reserved for future codification purposes.

ARTICLE 4.

Office of the Controller.

§ 115C-27. Appointment of controller; salary.

The Board shall appoint a controller, subject to the approval of the Governor, who shall serve at the will of the Board. The salary of the controller shall be fixed by the Governor subject to the approval of the Advisory Budget Commission and shall be paid from Board appropriations. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-28. Fiscal affairs of the Board defined.

All matters pertaining to the budgeting, allocation, accounting, auditing, certification, and disbursing of public school funds, now or hereafter committed to the administration of the State Board of Education, are included within the meaning of the term "fiscal affairs of the Board" and, under the direction of the Board, shall be supervised and managed by the controller. The fiscal affairs of the Board shall also include:

- (1) The preparation and administration of the State school budget, including all funds appropriated for the maintenance of the public school term.
- (2) The allotment of teachers.
- (3) The protection of State funds by appropriate bonds.
- (4) Workers' compensation as applicable to school employees.
- (5) Sick leave.
- (6) The administration of such federal funds as may be made available by acts of Congress for the use of public schools.
- (7) Administration of all State funds derived from the sale and rental of textbooks in the public schools.
- (8) The operation of plant, and other auxiliary agencies under the administration of the Board.
- (9) Administration of the Public School Insurance Fund.
- (10) All fiscal matters embraced in the objects of expenditure referred to in current acts of the General Assembly appropriating funds for the system of free public schools. (1955, c. 1372, art. 4, s. 1; 1981, c. 423, s. 1.)

§ 115C-29. Controller's powers and duties generally.

(a) The controller is constituted the executive administrator of the Board in the supervision and management of the fiscal affairs of the Board. In this capacity it shall be his duty, under the direction of the Board, to administer the funds provided for the operation of the schools of the State on such standards as may be determined by the Board and always within the total funds appropriated therefor.

(b) The controller, under the direction of the Board, shall perform the following duties:

- (1) He shall maintain a record or system of bookkeeping which shall reflect at all times the status of all educational funds committed to the administration of the Board and particularly the following:
 - a. State appropriation for maintenance of the public school term, which shall include all the objects of expenditure enumerated in G.S. 115C-426.
 - b. State appropriation and any other funds provided for the purchase and rental of public school textbooks.
 - c. State literary and building funds and such other building funds as may be hereafter provided by the General Assembly for loans, or grants, to local boards of education for school building purposes.
 - d. State and federal funds for vocational education and other funds as may be provided by act of Congress for assistance to the educational program.
 - e. State appropriation for the maintenance of the Board and its office personnel and including all employees serving under the Board.
 - f. Any miscellaneous funds within the jurisdiction of the Board not included in the above.
- (2) He shall prepare all forms and questionnaires necessary to furnish information and data for the consideration of the Board in preparing the State budget estimates required to be determined by the Board as to each local school administrative unit.
- (3) He shall certify to each local school administrative unit the teacher allotment as determined by the Board under G.S. 115C-301. The Superintendent of the administrative units shall then certify to the Superintendent the names of the persons employed as teachers and principals by districts. The Superintendent shall then determine the certificate ratings of the teachers and principals, shall certify such ratings to the controller, who shall then determine in accordance with the State standard salary schedule for teachers and principals, the salary rating of each person so certified. The controller shall then determine, in accordance with the schedule of salaries established, the total cost of salaries in each local school administrative unit for teachers and principals to be included in the State budget for the current fiscal year.
- (4) He shall satisfy himself before issuing any requisition upon the Department of Administration for payment out of the State treasury of any funds placed to the credit of any local school administrative unit, under the provisions of G.S. 115C-438:
 - a. That funds are lawfully available for the payment of such requisition; and
 - b. Where the order covers salary payment to any employee that the amount thereof is within the salary schedule or salary rating of the particular employee.
- (5) He shall procure, through the Department of Administration, contracts for the purchase of the estimated needs and requirements of the several local school administrative units, covering the items of

janitor supplies, instructional supplies, supplies used by the State Board of Education, and all other supplies, the payment for which is made from funds committed to the administration of the Board.

- (6) He shall purchase from the various publishers the textbooks needed and required in the public schools in accordance with contracts made by the State Board of Education.
- (7) He shall, in cooperation with the State Auditor, cause to be made an annual audit of the State school funds disbursed by local school administrative units and all other funds which by law are committed to the administration of the Board.
- (8) He shall attend all meetings of the Board and shall furnish all such information and data concerning the fiscal affairs of the Board as the Board may require.
- (9) He shall employ all necessary administrative and supervisory employees who work under his direction in the administration of the fiscal affairs of the Board, subject to the approval of the State Board of Education, which shall have authority to terminate such appointments for cause in conformity with Chapter 126 of the General Statutes, the State Personnel System.
- (10) He shall report directly to the Board upon all matters coming within his supervision and management.
- (11) He shall furnish to the Superintendent such information relating to fiscal affairs as may be necessary in the administration of his official duties.
- (12) He shall perform such other duties as may be assigned to him by the Board from time to time. (1955, c. 1372, art. 4, s. 1; 1957, c. 269, s. 1; 1975, c. 437, s. 15.1; c. 699, s. 4; c. 879, s. 46; 1981, c. 423, s. 1.)

§§ 115C-30 to 115C-34: Reserved for future codification purposes.

ARTICLE 5.

Local Boards of Education.

§ 115C-35. How constituted.

(a) The county board of education in each county shall consist of five members elected by the voters of the county at large for terms of four years: Provided, that where there are multiple local school administrative units located within the county, and unless the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, only those voters who reside within the county school administrative unit boundary lines shall be eligible to vote for members of the county board of education. Where the county board is responsible for appointing members of the board of education of a city administrative unit located within the county, the voters residing within that city school administrative unit shall be eligible to vote for members of the county board of education.

The terms of office of the members of boards of education of all school administrative units in this State, who serve on June 25, 1975, shall continue until members are elected and qualified as provided in this section unless modified by local legislation.

(b) No person residing in a local school administrative unit shall be eligible for election to the board of education of that local school administrative unit unless such person resides within the boundary lines of that local school administrative unit. (1955, c. 1372, art. 5, s. 1; 1967, c. 972, s. 1; 1969, c. 1301, s. 2; 1975, c. 855, ss. 1-3; 1981, c. 423, s. 1.)

§ 115C-36. Designation of board.

All powers and duties conferred and imposed by law respecting public schools, which are not expressly conferred and imposed upon some other official, are conferred and imposed upon local boards of education. Said boards of education shall have general control and supervision of all matters pertaining to the public schools in their respective administrative units and they shall enforce the school law in their respective units. (1955, c. 1372, art. 5, s. 18; 1957, c. 262; 1963, c. 425; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; 1981, c. 423, s. 1.)

Cross References. — As to powers and duties of board generally, see § 115C-47.

§ 115C-37. Election of board members.

(a) **Method of Election.** — The county boards of education shall be elected on a nonpartisan basis at the time of the primary election in 1970 and biennially thereafter. The names of the candidates shall be printed on the ballots without reference to any party affiliation and any qualified voter residing in the county shall be entitled to vote such ballots. Except as otherwise provided herein, the election shall be conducted according to the provisions of Chapter 163 of the General Statutes then governing primary elections.

The terms of office of the members shall be staggered so as nearly equal to one half as possible shall expire every two years.

(b) **County Board of Elections to Provide for Elections.** — The county board of elections under the direction of the State Board of Elections, shall make all necessary provisions for elections of county boards of education as are herein provided for. The county board of elections of each county shall file with the State Board of Elections a statement specifying the size and method of election of members of its county board of education.

(c) **City Board of Education.** — The board of education for any city administrative unit shall be appointed or elected as now provided by law. If no provision is now made by the law for the filling of vacancies in the membership of any city board of education, such vacancy may be filled by the governing body of the city or town embraced by said administrative unit. In the event that any such vacancy is not filled in this manner within 30 days, the State Board of Education may fill such vacancy.

(d) **Members to Qualify.** — Those persons who shall be elected members of the county boards of education must qualify by taking the oath of office on or before the first Monday in December next succeeding their election. A failure to qualify within that time shall constitute a vacancy which shall be filled as set out in subsection (f) of this section. Those persons appointed to fill a vacancy must qualify within 30 days after notification. A failure to qualify within that time shall constitute a vacancy.

This subsection shall not have the effect of repealing any local or special acts relating to boards of education of any particular counties whose membership to said boards is chosen by a vote of the people.

(e) **Vacancies in Nominations for Membership on County Boards.** — If any candidate nominated on a partisan basis shall die, resign, or for any reason become ineligible or disqualified between the date of his nomination and the time for the election, such vacancy caused thereby may be filled by the actions of the county executive committee of the political party of such candidate.

(f) **Vacancies in Office.** — All vacancies in the membership of the boards of education whose members are elected pursuant to the provisions of subsection (a) of this section by death, resignation, or other causes shall be filled by

appointment by the remaining members of the board, of a person to serve until the next election of members of such board, at which time the remaining unexpired term of the office in which the vacancy occurs shall be filled by election.

(g) **Eligibility for Board Membership; Holding Other Offices.** — Any person possessing the qualifications for election to public office set forth in Article VI, Sec. 6 of the Constitution of North Carolina shall be eligible to serve as a member of a local board of education: Provided, however, that any person elected or appointed to a local board of education, and also employed by that board of education or appointed to a district committee by that board of education, shall resign his employment before taking office as a member of that board of education.

Membership on a board of education is hereby declared to be an office that, with the exceptions provided above, may be held concurrently with any appointive office, pursuant to Article VI, Sec. 9 of the Constitution, but any person holding an elective office shall not be eligible to serve as a member of a local board of education. (1955, c. 1372, art. 5, ss. 2-8; 1967, c. 972, ss. 2-6; 1969, c. 1301, s. 2; 1971, c. 704, s. 6; 1973, c. 1446, s. 1; 1977, c. 662; 1981, c. 423, s. 1.)

Local Modification. — Orange: 1981, c. 911;
Pamlico: 1981, c. 551.

§ 115C-37.1. Vacancies in offices of county boards elected on partisan basis in certain counties.

(a) All vacancies in the membership of county boards of education which are elected by public or local act on a partisan basis shall be filled by appointment of the person, board, or commission specified in the act, except that if the act specifies that appointment shall be made by a party executive committee, then the appointment shall be made instead by the remaining members of the board.

(b) If the vacating member was elected as the nominee of a political party, then the person, board, or commission required to fill the vacancy shall consult with the county executive committee of that party and appoint the person recommended by that party executive committee, if the party executive committee makes a recommendation within 30 days of the occurrence of the vacancy.

(c) Whenever only the qualified voters of less than the entire county were eligible to vote for the member whose seat is vacant (either because the county administrative unit was less than countywide or only residents of certain areas of the administrative unit could vote in the general election for a district seat) the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territory of the vacating school board member.

(d) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Cherokee, Clay, Cleveland, Davidson, Davie, Graham, Guilford, Haywood, Henderson, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey. (1981, c. 763, ss. 4, 14; c. 830.)

Editor's Note. — Session Laws 1981, c. 763, s. 15, provides that the act shall become effective July 1, 1981, and applies to vacancies occurring on or after that date.

Effect of Amendments. — The 1981 amendment made this section applicable to Avery County.

§ 115C-38. Compensation of board members.

The tax-levying authority for a local school administrative unit may, under the procedures of G.S. 153A-92, fix the compensation and expense allowances paid members of the board of education of that local school administrative unit.

Funds for the per diem, subsistence, and mileage for all meetings of county and city boards of education shall be provided from the current expense fund budget of the particular county or city.

The compensation and expense allowances of members of boards of education shall continue at the same levels as paid on July 1, 1975, until changed by or pursuant to local act or pursuant to this section. (1955, c. 1372, art. 5, s. 12; 1975, c. 569, ss. 1-3; 1977, c. 802, s. 39.5; 1981, c. 423, s. 1.)

§ 115C-39. Removal of board members.

In case the Superintendent of Public Instruction shall have sufficient evidence that any member of a local board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, he shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education. (1955, c. 1372, art. 5, s. 13; 1981, c. 423, s. 1.)

§ 115C-40. Board a body corporate.

The board of education of each county in the State shall be a body corporate by the name and style of "The County Board of Education," and the board of education of each city administrative school unit in the State shall be a body corporate by the name and style of "The City Board of Education." The several boards of education, both county and city, shall hold all school property and be capable of purchasing and holding real and personal property, of building and repairing schoolhouses, of selling and transferring the same for school purposes, and of prosecuting and defending suits for or against the corporation.

Where there is public school property now in the possession of school committees who were bodies corporate prior to January 1, 1900, or who became bodies corporate by special act of the General Assembly but who have since ceased to be bodies corporate; and where land was conveyed by deed bearing date prior to January 1, 1900, to local trustees for school purposes, and such deed makes no provision for successor trustees to those named in said deed, and all of such trustees are dead; and where such land is not now being used for educational purposes by the board of the local school administrative unit wherein such land is located, the clerk of the superior court of the county wherein such property or such land is located shall convey said property or land to the board of education of the local school administrative unit in which the land is located.

Local boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective local school administrative units; they shall execute the school laws in their units; and shall have authority to make agreements with other boards of education to transfer pupils from one local school administrative unit to another unit when the administration of the schools can be thereby more

efficiently and more economically accomplished. (1955, c. 1372, art. 5, s. 10; 1981, c. 423, s. 1.)

CASE NOTES

Board of County Commissioners Not Authorized to Devise and Fund School for Dyslexic Children, Absent Prior School Board Action. — Since, under the scheme for public education devised by the General Assembly, the board of county commissioners is empowered to appropriate funds only for items that are included by the board of education in its annual school budget, the board of county commissioners, absent statutory authority, cannot on its own initiative devise and fund

programs for the school system. Therefore, a program of aid for the Dyslexia School of North Carolina devised and funded by the Gaston County Board of Commissioners on its own initiative and made directly to the school by that board was not authorized under the statutory scheme for public education adopted by the General Assembly. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979), (decided under former § 115-27).

§ 115C-41. Organization of board.

(a) At the first meeting of the new county board in April, the members of all boards shall organize by electing one of their members as chairman for a period of one year, or until his successor is elected and qualified. The chairman of the county board of education shall preside at the meetings of the board, and in the event of his absence or sickness, the board may appoint one of its members temporary chairman. The superintendent of schools, whether a county or city superintendent, shall be ex officio secretary to his respective board. He shall keep the minutes of the meetings of the board but shall have no vote: Provided, that in the event of a vacancy in the superintendency, the board may elect one of its members to serve temporarily as secretary to the board.

(b) All local boards of education shall meet on the first Monday in January, April, July, and October of each year, or as soon thereafter as practicable. A board may elect to hold regular monthly meetings, and to meet in special session upon the call of the chairman or of the secretary as often as the school business of the local school administrative unit may require. (1955, c. 1372, art. 5, ss. 9, 11; 1981, c. 423, s. 1.)

§ 115C-42. Liability insurance and immunity.

Any local board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the local board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of said board of education or the agents and employees of a particular school in a local administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporation which enters into a contract of insurance as above

described with a local board of education, by such act waives any defense based upon the governmental immunity of such local board of education.

Every local board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a local board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of governmental, municipal or discretionary function of such local board of education if, and to the extent, such local board of education has insurance coverage as provided by this section.

Except as hereinbefore expressly provided, nothing in this section shall be construed to deprive any local board of education of any defense whatsoever to any such action for damages or to restrict, limit, or otherwise affect any such defense which said board of education may have at common law or by virtue of any statute; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to said local board of education or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

A local board of education may incur liability pursuant to this section only with respect to a claim arising after such board of education has procured liability insurance pursuant to this section and during the time when such insurance is in force.

No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Such liability shall not attach unless the plaintiff shall waive the right to have all issues of law or fact relating to insurance in such an action determined by a jury and such issues shall be heard and determined by the judge without resort to a jury and the jury shall be absent during any motions, arguments, testimony or announcement of findings of fact or conclusions of law with respect thereto unless the defendant shall request a jury trial thereon: Provided, that this section shall not apply to claims for damages caused by the negligent acts or torts of public school bus, or school transportation service vehicle drivers, while driving school buses and school transportation service vehicles when the operation of such school buses and service vehicles is paid from the State Public School Fund. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3; 1981, c. 423, s. 1.)

Cross References. — As to agreements for use of school buses by senior citizen groups, see § 115C-243. As to applicability to activity buses, see § 115C-247. As to exception where

bus operated with funds from Public School Fund, see § 115C-255. As to liability for transportation generally, see § 115C-262.

§ 115C-43. Defense of board of education members and employees.

(a) Upon request made by or in behalf of any member or employee or former member or employee, any local board of education may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as a member of or employee of the local board of education. The defense may be provided by the local board of education by its

own counsel, or by employing other counsel, or by purchasing insurance which requires that the insurer provide the defense. Nothing in this section shall be deemed to require any local board of education to provide for the defense of any action or proceeding of any nature.

(b) Any local board of education may budget funds for the purpose of paying all or part of a claim made or any civil judgment entered against any of its members or employees or former members and employees, when such claim is made or such judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as a member of the local board of education or as an employee. Nothing in this section shall authorize any local board of education to budget funds for the purpose of paying any claim made or civil judgment entered against any of its members or employees or former members and employees if the local board of education finds that such member or employee acted or failed to act because of actual fraud, corruption or actual malice on his part. Any local board of education may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section shall be deemed to require any local board of education to pay any claim or judgment referred to herein, and the purchase of insurance coverage for payment of any such claim or judgment shall not be deemed an assumption of any liability not covered by such insurance contract, and shall not be deemed an assumption of liability for payment of any claim or judgment in excess of the limits of coverage in such insurance contract.

(c) Subsection (b) of this section shall not authorize any local board of education to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the local board of education prior to the time that the claim is settled or civil judgment is entered and (ii) the local board of education shall have adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against members or employees or former members and employees shall be defended or paid. (1979, c. 1074, s. 1; 1981, c. 423, s. 1.)

§ 115C-44. Suits and actions.

(a) A local board of education shall institute all actions, suits, or proceedings against officers, persons, or corporations, or their sureties, for the recovery, preservation, and application of all money or property which may be due to or should be applied to the support and maintenance of the schools, except in case of the breach of his bond by the treasurer of the county school fund, in which case action shall be brought by the board of county commissioners.

(b) In all actions brought in any court against a local board of education, the order or action of the board shall be presumed to be correct and the burden of proof shall be on the complaining party to show the contrary. (1955, c. 1372, art. 5, s. 14; 1981, c. 423, s. 1.)

§ 115C-45. Judicial functions of board.

(a) Power to Subpoena and to Punish for Contempt. — Local boards of education shall have power to issue subpoenas for the attendance of witnesses. Subpoenas may be issued in any and all matters which may lawfully come within the powers of the board and which, in the discretion of the board, require investigation; and it shall be the duty of the sheriff or any process serving officer to serve such subpoena upon payment of their lawful fees.

Local boards of education shall have power to punish for contempt for any disorderly conduct or disturbance tending to disrupt them in the transaction of official business.

(b) **Witness Failing to Appear; Misdemeanor.** — Any witness who shall wilfully and without legal excuse fail to appear before a local board of education to testify in any manner under investigation by the board shall be guilty of a misdemeanor, and shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days.

(c) **Appeals to Board of Education and to Superior Court.** — An appeal shall lie from the decision of all school personnel to the appropriate local board of education. In all such appeals it shall be the duty of the board of education to see that a proper notice is given to all parties concerned and that a record of the hearing is properly entered in the records of the board conducting the hearing.

The board of education may designate hearing panels composed of not less than two members of the board to hear and act upon such appeals in the name and on behalf of the board of education.

An appeal shall lie from the decision of a local board of education to the superior court of the State in any action of a local board of education affecting one's character or right to teach. (1955, c. 1372, art. 5, ss. 15-17; 1971, c. 647; 1981, c. 423, s. 1.)

Cross References. — As to right to appeal from decisions affecting character or the right to teach, see § 115C-305.

CASE NOTES

Editor's Note. — The annotations under this section are taken from a case decided under former § 115-34.

Procedures Constitutionally Effective. — The hearing and appeal procedures contemplated by former § 115-34 provided plaintiff a constitutionally "effective" set of administrative and judicial remedies despite the fact that it gave authority for a hearing only after plaintiff was discharged. *Presnell v. Pell*, 298 N.C. 715, 260 S.E.2d 611 (1979).

Appeal Must First Be to Board of Education. — Former § 115-34 required that a party entitled to its provisions first challenge action taken by school personnel by way of an appeal to the appropriate county or city board of education. After a decision by the board "affecting one's character or right to teach," a party may then invoke the appellate jurisdiction of the superior court. *Presnell v. Pell*, 298 N.C. 715, 260 S.E.2d 611 (1979).

§ 115C-46. Powers of local boards to regulate parking of motor vehicles.

(a) Any local board of education may adopt reasonable rules and regulations with respect to the parking of motor vehicles and other modes of conveyance on public school grounds and may enforce such rules and regulations. Any person who violates a rule or regulation concerning parking on public school grounds is guilty of a misdemeanor and, upon conviction, may be punished by a fine of not more than ten dollars (\$10.00). Provided, however, that any rule or regulation adopted hereunder may provide that certain acts prohibited thereby shall not be enforced by criminal sanctions, and in such cases a person committing any such act shall not be guilty of a misdemeanor. Rules and regulations adopted hereunder shall be made available for inspection by any person upon request.

(b) Any local board of education may adopt written guidelines governing the individual assignment of parking spaces on school grounds. Such guidelines shall give first priority treatment to the physically handicapped.

(c) Any local board of education, by rules and regulations adopted hereunder, may provide for the registration of motor vehicles and other modes

of conveyance maintained, operated or parked on school grounds. Any local board of education, by rules and regulations adopted hereunder, may provide for the issuance of stickers, decals, permits or other indicia representing the registration status of vehicles or the eligibility of vehicles to park on school grounds and may prohibit the forgery, counterfeiting, unauthorized transfer or unauthorized use of them.

(d) Any motor vehicle parked in a parking lot on school grounds, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at each entrance thereto, in violation of the rules and regulations adopted by the local board of education, or any motor vehicle otherwise parked on school grounds in violation of the rules and regulations adopted by the county or city local board of education, may be removed from school grounds to a place of storage and the registered owner of such vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from school grounds to place of storage. (1979, c. 821; 1981, c. 423, s. 1.)

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- (1) To Provide an Adequate School System. — It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.
- (2) To Exercise Certain Judicial Functions and to Participate in Certain Suits and Actions. — Local boards of education shall have the power and authority to exercise certain judicial functions pursuant to the provisions of G.S. 115C-45 and to participate in certain suits and actions pursuant to the provisions of G.S. 115C-44.
- (3) To Divide Local School Administrative Units into Attendance Areas. — Local boards of education shall have authority to divide their various units into attendance areas without regard to district lines.
- (4) To Regulate Extracurricular Activities. — Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules and regulations prescribed by the State Board of Education.
- (5) To Fix Time of Opening and Closing Schools. — The time of opening and closing the public schools shall be fixed pursuant to the provisions of G.S. 115C-84(e).
- (6) To Regulate Fees, Charges and Solicitations. — Local boards of education shall adopt rules and regulations governing solicitations of, sales to, and fund-raising activities conducted by, the students and faculty members in schools under their jurisdiction, and no fees, charges, or costs shall be collected from students and school personnel without approval of the board of education as recorded in the minutes of said board; provided, this subdivision shall not apply to such textbook fees as are determined and established by the State Board of Education. All schedules of fees, charges and solicitations approved by local boards of education shall be reported to the Superintendent of Public Instruction.

- (7) To Accept and Administer Federal or Private Funds. — Local boards of education shall have power and authority to accept, receive and administer any funds or financial assistance given, granted or provided under the provisions of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362) and under the provisions of the Economic Opportunity Act of 1964 (Public Law 88-452, 88th Congress, S. 2642), or other federal acts or funds from foundations or private sources, and to comply with all conditions and requirements necessary for the receipt, acceptance and use of said funds. In the administration of such funds, local boards of education shall have authority to enter into contracts with and to cooperate with and to carry out projects with nonpublic elementary and secondary schools, community groups and nonprofit corporations, and to enter into joint agreements for these purposes with other local boards of education. Local boards of education shall furnish such information as shall be requested by the State Board of Education, from time to time, relating to any programs related or conducted pursuant to this subdivision.
- (8) To Sponsor or Conduct Educational Research. — Local boards of education are authorized to sponsor or conduct educational research and special projects approved by the Department of Public Instruction and the State Board of Education that may improve the school system under their jurisdictions. Such research or projects may be conducted during the summer months and the board may use any available funds for such purposes.
- (9) To Assure Accurate Attendance Records. — When the governing board of any local school administrative unit shall have information that inaccurate school attendance records are being kept, the board concerned shall immediately investigate such inaccuracies and take necessary action to establish and maintain correct records and report its findings and action to the State Board of Education.
- (10) To Assure Appropriate Class Size. — It shall be the responsibility of local boards of education to determine if any exceptions occur during the school year in the allowed maximums. If additional pupils are enrolled so as to cause assignment of pupils in excess of the allowed maximums, except for an emergency or act of God, it shall be the duty of any affected teacher and of the principal to notify the superintendent, who shall immediately report the deviation to the local board of education. Upon notification of excess deviations in the maximum class size, local boards shall take correctional steps and shall transfer teaching positions between schools, if necessary, to correct the excess deviation. If the local board cannot remedy the situation, it shall immediately apply to the State Board of Education for contingency funds for additional personnel to correct exceptions. Excess deviations which cannot be corrected by transfer of teachers and by use of contingency funds shall be temporarily allowed with permission of the State Board of Education.

At the end of the first month of school each year, the superintendent of each administrative unit shall file a report for each school with the State Board of Education. This report shall be filed on forms furnished by the board and shall indicate the complete organization of each school, the duties of each teacher or other instructional personnel, and the class size or teaching load of each teacher.

It shall be the duty of local boards of education to provide adequate classroom facilities to meet the requirements of this subdivision and of G.S. 115C-301.

- (11) To Determine the Length of the School Day, the School Month and the School Term. — Local boards of education shall determine the length of the school day, the school month and the school term pursuant to the provisions of G.S. 115C-84(a) through (c).
- (12) To Provide for Efficient Teaching of Subjects in the Outline Course of Study. — Local boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the Superintendent of Public Instruction, as provided in G.S. 115C-81(b).
- (13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.
- (14) To Supply an Office, Equipment and Clerical Assistance for the Superintendent. — It shall be the duty of the various boards of education to provide the superintendent of schools with an office, equipment and clerical assistance as provided in G.S. 115C-277.
- (15) To Prescribe Duties of Superintendent. — The local boards of education shall prescribe the duties of the superintendent as subject to the provisions of G.S. 115C-276(a).
- (16) To Remove a Superintendent or Committeeman, When Necessary. — Local boards of education shall remove a superintendent or a committeeman for cause, pursuant to the provisions of G.S. 115C-59 and 115C-274(a).
- (17) To Employ Assistant Superintendents and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).
- (18) To Make Rules Concerning the Conduct and Duties of Personnel. — Local boards of education, upon the recommendation of the superintendent, shall have full power to make all just and needful rules and regulations governing the conduct of teachers, principals, and supervisors, the kind of reports they shall make, and their duties in the care of school property.
- (19) To Approve the Assignment of Duties to an Assistant Principal. — Local boards of education shall permit certain duties of the principal to be assigned to an assistant or acting principal pursuant to the provisions of G.S. 115C-289.
- (20) To Provide for Training of Teachers. — Local boards of education are authorized to provide for the training of teachers as provided in G.S. 115C-300.
- (21) To Pay School Employees. — It shall be the duty of every local board of education to provide for the prompt monthly payment of all salaries due teachers and other school officials and employees, and of all current bills and other necessary operating expenses. All salaries and bills shall be paid as provided by law for disbursing State and local funds.

The local board shall determine salary schedules of employees pursuant to the provisions of G.S. 115C-273, 115C-285(b), 115C-302(b) and 115C-316(b).

The authority for boards of education to issue salary vouchers to all school employees, whether paid from State or local funds, shall be a monthly payroll prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of each school.

- (22) To Provide School Food Services. — Local boards of education shall provide, to the extent practicable, school food services as provided in Part 2 of Article 17 of this Chapter.

- (23) To Purchase Equipment and Supplies. — They shall contract for equipment and supplies pursuant to the provisions of G.S. 115C-522(a).
- (24) Purchase of Activity Buses with Local Capital Outlay Tax Funds. — Local boards of education are authorized to purchase activity buses with local capital outlay tax funds, and are authorized to maintain these buses in the county school bus garage. Reimbursement to the State Public School Fund shall be made for all maintenance cost including labor, gasoline and oil, repair parts, tires and tubes, anti-freeze, etc. Labor cost reimbursements and local funds may be used to employ additional mechanics so as to insure that all activity buses owned and operated by local boards of education are maintained in a safe mechanical condition. The State Board of Education shall inspect each activity bus and recommend to the board whether the bus should be replaced but replacements will be determined by the local board of education. Such replacement units for activity buses shall be financed with local funds.
- (25) To Secure Liability Insurance. — Local boards of education are authorized to secure liability insurance, as provided in G.S. 115C-42, so as to waive their immunity for liability for certain negligent acts of their employees.
- (26) If a local board of education provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the local board of education shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military. (1955, c. 1372, art 5, ss. 18, 28, 30, 33; art. 6, s. 6; art. 17, s. 6; 1957, c. 262; 1959, c. 1294; 1963, c. 425; c. 688, s. 3; 1965, c. 584, ss. 4, 6; c. 1185, s. 1; 1969, c. 517, s. 2; c. 539; 1973, c. 770, ss. 1, 2; c. 782, s. 31; 1975, c. 150, s. 1; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; c. 901, s. 1.)

Cross References. — As to the rules of the local board governing the conduct of principals and supervisors, see § 115C-286. As to the rules of the local board governing the conduct of

teachers, see § 115C-308.

Effect of Amendments. — Session Laws 1981, c. 901, s. 1, effective Oct. 1, 1981, added subdivision (26).

§ 115C-48. Penalties for certain conduct.

- (a) Members of local boards of election [local boards of education] are criminally liable for certain conduct as provided in G.S. 14-234 through 14-237.
- (b) Members of local boards of election [local boards of education] are civilly liable for certain conduct as provided in G.S. 115C-441. (1981, c. 423, s. 1.)

Editor's Note. — It appears that the words "local boards of election," which appear in this section as enacted by Session Laws, 1981, c. 423,

should be "local boards of education." The error has been corrected in brackets in the section as set out above.

§§ 115C-49 to 115C-53: Reserved for future codification purposes.

ARTICLE 6.

*School Committees.***§ 115C-54. Eligibility and oath of office; holding other offices.**

Each school committeeman or member of an advisory council shall be a person of intelligence, good moral character, and good business qualifications, who is known to be in favor of public education and who resides in the district. Before entering upon the duties of his office, he shall take oath for the faithful performance thereof, which oath may be taken before the county superintendent.

No person, while employed as teacher in either a public school or a private school, or while serving as a member of any local board of education or serving as an employee of the schools shall be eligible to serve as a member of a district committee.

A school committeeman appointed to a school committee under G.S. 115C-55 or a councilman appointed to an advisory council is hereby declared to hold an office that, with the exceptions provided above, may be held concurrently with any appointive office pursuant to Article VI, Sec. 9, of the Constitution, but any person holding an elective office shall not be eligible to serve on a school committee or advisory council. (1955, c. 1372, art. 7, s. 1; 1971, c. 704, s. 7; 1981, c. 423, s. 1.)

§ 115C-55. Appointment; number of members; terms; vacancies; advisory council.

The county boards of education shall biennially elect and appoint school committees for each of the several districts in their counties, consisting of not less than three, nor more than five persons, for each school district, whose term of office shall be for two years: Provided, that in county school administrative units organized as one district, the county board of education need not appoint a district school committee, in which case the county board of education shall assume the duties of the district school committee or may authorize an advisory council, or councils, to assume such duties as it may legally delegate to them. In the event of death, resignation or removal from the district of any member of said school committee, the county board of education shall be empowered to select and appoint his or her successor to serve the remainder of the term: Provided that in units desiring the same, by action of the county board of education, one third of the members may be selected for a term of one year, one third of the members for a term of two years, and one third of the members for a term of three years, and thereafter all members for a term of three years from the expiration of said terms. This section shall not have the effect of repealing any local or special acts relating to the appointment or terms of office of school committees.

A county board of education may appoint an advisory council for any school or schools within the local school administrative unit. The purpose and function of an advisory council shall be to serve in an advisory capacity to the board on matters affecting the school or schools for which it is appointed. The organization, terms, composition and regulations for the operation of such advisory council shall be determined by the board. (1955, c. 1372, art. 7, s. 2; 1957, c. 686, s. 2; 1965, c. 584, s. 8; 1981, c. 423, s. 1.)

§ 115C-56. Organization of school committee; meetings.

The school committee, at its first meeting after the membership has been completed by the county board of education, shall elect from its number, a chairman and secretary, who shall keep a record of its proceedings in a book to be kept for that purpose, which shall be open to public inspection. The names and addresses of the chairman and secretary shall be reported to the county superintendent and recorded by him. The committee shall meet as often as the school business of the district may require. (1955, c. 1372, art. 7, s. 3; 1981, c. 423, s. 1.)

§ 115C-57. How to employ principals, teachers, janitors and maids.

The district committee, upon the recommendation of the county superintendent of schools, shall elect the principals for the schools of the district, subject to the approval of the county board of education. The principal of each school shall nominate and the district committee shall elect the teachers for all the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. Likewise, upon the recommendation of the principal of each school of the district, the district committee shall appoint janitors and maids for the schools of the district, subject to the approval of the county superintendent of schools and the county board of education. No election of a principal or teacher, or appointment of a janitor or maid, shall be deemed valid until such election or appointment has been approved by the county superintendent and the county board of education. No teacher under 18 years of age may be employed, and the election of all teachers and principals and the appointment of all janitors and maids shall be done at regular or called meetings of the committee.

In the event the district committee and the county superintendent are unable to agree upon the nomination and election of a principal or the principal and the district committee are unable to agree upon the nomination and election of teachers or appointment of janitors or maids, the county board of education shall select the principal and teachers and appoint janitors and maids, which selection and appointment shall be final.

The distribution of the teachers and janitors among the several schools of the district shall be subject to the approval of the county board of education. (1955, c. 1372, art. 7, s. 4; 1965, c. 584, s. 9; 1981, c. 423, s. 1.)

§ 115C-58. Committee's responsibility as to school property.

It shall be the duty of the school committee to protect all school property in its district. To this end, it is given custody of all schoolhouses, schoolhouse sites, grounds, textbooks, apparatus, and other school property in the district, with full power to control same as it may deem best for the interests of the public schools and the cause of education, but not in conflict with the rules and regulations of the county board of education. It shall be the duty of the committee to report any misuse or damage of school property immediately to the county board of education: Provided, that if the committee is unable or shall fail to take due care of all school property of the district, the county board of education may designate some responsible citizen of the district to have special charge of the property during vacation. (1955, c. 1372, art. 7, s. 5; 1981, c. 423, s. 1.)

§ 115C-59. Removal of committeemen for cause.

In case the county superintendent or any member of the county board of education shall have sufficient evidence at any time that any member of any school committee is not capable of discharging, or is not discharging, the duties of his office, or is guilty of immoral or disreputable conduct, he shall bring the matter to the attention of the county board of education, which shall thoroughly investigate the charges. If the board of education finds that the evidence supports the charges made to such an extent that the actions and conduct of said committeeman are not for the best interests of the schools, then the board shall proceed to remove such committeeman and appoint his successor: Provided, that such committeeman shall be given proper notice of the hearing and that a record of the findings of the board shall be recorded in the minutes of the meeting. (1955, c. 1372, art. 5, s. 26; 1981, c. 423, s. 1.)

§§ 115C-60 to 115C-64: Reserved for future codification purposes.

SUBCHAPTER III. SCHOOL DISTRICTS AND UNITS.**ARTICLE 7.***Organization of Schools.***§ 115C-65. State divided into districts.**

The State of North Carolina shall be divided into eight educational districts embracing the counties herein set forth:

First District

Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Pitt, Tyrrell, Washington.

Second District

Brunswick, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, Wayne.

Third District

Durham, Edgecombe, Franklin, Granville, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wilson.

Fourth District

Bladen, Columbus, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, Robeson, Scotland.

Fifth District

Alamance, Caswell, Chatham, Davidson, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes.

Sixth District

Anson, Cabarrus, Cleveland, Gaston, Lincoln, Mecklenburg, Stanly, Union.

Seventh District

Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Rowan, Surry, Watauga, Wilkes, Yadkin.

Eighth District

Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, Yancey. (1955, c. 1372, art. 1, s. 3; 1981, c. 423, s. 1.)

§ 115C-66. Administrative units classified.

Each county of the State shall be classified as a county school administrative unit, the schools of which, except in city administrative units, shall be under the general supervision and control of a county board of education with a county superintendent as the administrative officer.

A city school administrative unit shall be classified as an area within a county or adjacent parts of two or more contiguous counties which has been or may be approved by the State Board of Education as such a unit for purposes of school administration. The general administration and supervision of a city administrative unit shall be under the control of a board of education with a city superintendent as the administrative officer.

All local school administrative units, whether city or county, shall be dealt with by the State school authorities in all matters of school administration in the same way. (1955, c. 1372, art. 1, s. 4; 1981, c. 423, s. 1.)

§ 115C-67. Merger of units in same county.

City school administrative units may be consolidated and merged with contiguous city school administrative units and with county school administrative units upon approval by the State Board of Education of a plan for consolidation and merger submitted by the boards of education involved and bearing the approval of the board of county commissioners.

County and city boards of education desiring to consolidate and merge their school administrative units may do so by entering into a written plan which shall set forth the conditions of merger. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

- (1) The name by which the merged school administrative unit shall be identified and known.
- (2) The effective date of the merger.
- (3) The establishment and maintenance of a board of education which shall administer all the public schools of the newly created unit, including:

- a. The termination of any terms of office proposed in the reorganization of the board.
- b. The method of constituting and continuing the board of education, the length of the members' terms of office, the dates of induction into office, the organization of the board, the procedure for filling vacancies, and the compensation to be paid members of the board for expenses incurred in performance of their duties.
- (4) The authority, powers, and duties of the board of education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the merged unit not inconsistent with the General Statutes.
- (5) The transfer of all facilities, properties, structures, funds, contracts, deeds, titles, and other obligations, assets and liabilities to the board of education of the merged unit.
- (6) Whether or not there shall be continued in force any supplemental school tax which may be in effect in either or all local school administrative units involved.
- (7) A public hearing, which shall have been announced at least 10 days prior to the hearing, on the proposed plan of merger.
- (8) A statement as to whether the question of merger, in accordance with the projected plan, is to be contingent upon approval of the voters in the affected area.
- (9) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the local school administrative units involved.

The plan referred to above shall be mutually agreed upon by the city and county boards of education involved and shall be accompanied by a certification that the plan was approved by the board of education on a given day and that the action has been duly recorded in the minutes of said board, together with a certification to the effect that the public hearing required above was announced and held. The plan, together with the required certifications, shall then be submitted to the board of county commissioners for its concurrence and approval. After such approval has been received, the plan shall be submitted to the State Board of Education for the approval of said State Board and the plan shall not become effective until such approval is granted. Upon approval by the State Board of Education, the plan of consolidation and merger shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the General Assembly. The written plan of agreement shall be placed in the custody of the board of education operating and administering the public schools in the merged unit and a copy filed with the Secretary of State.

The plan may be, but it is not required that it be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for such purpose, and such elections or referendums if held shall be held under the provisions governing elections or referendums as set forth in G.S. 115C-507, with authority of the board of county commissioners to have such election or referendum conducted by the board of elections of the county.

Upon approval of the plan of consolidation or merger by the State Board of Education, or upon approval of the plan of consolidation or merger by the voters in a referendum or election called for such purpose, and as soon as a provisional or interim board of education of the merged unit, or a permanent board of education of the merged unit, enters in and upon the duties of the administration of the public schools of the consolidated or merged unit, then the former boards of education and all public officers of the former boards of education of the separate units thus merged shall stand abolished, and said separate boards of education or administrative units thus merged shall stand dissolved and

shall cease to exist for any and all purposes. All consolidations and mergers of county and city boards of education and of county and city school administrative units heretofore agreed to and finally approved, and all consolidation or merger proceedings entered into prior to June 9, 1969, are hereby declared to be effective, legal and according to law notwithstanding any defect in the merger or consolidation proceedings and notwithstanding any dissolution of the separate boards of education and public officers of the former, separate school units. (1967, c. 643, s. 3; 1969, c. 742; 1981, c. 423, s. 1.)

§ 115C-68. Merger of units in adjoining counties.

(a) Boards of education of contiguous counties or boards of education in a group of counties in which each county is contiguous with at least one other county in the group, and any city school administrative unit located in counties to be merged, may merge school administrative units upon approval by the State Board of Education of a written plan for merger submitted by the boards of education involved and bearing the approval of the tax-levying body for the school units. The plan shall be consistent with the General Statutes, shall contain provisions covering those items listed in G.S. 115C-67 (providing for the merger of units in the same county), and shall contain any other provision deemed necessary or appropriate by the State Board of Education or the local boards of education for the merger of school units in two or more counties.

(b) The plan of merger, including any arrangements for financing or taxing for the schools in the new local school administrative unit, may be, but is not required to be, submitted for the approval of the voters of the geographic area affected in a referendum or election called for the purpose of approving these matters. Such elections or referendums, if held, shall be held under the provisions governing elections or referendums as set forth in G.S. 115C-507. Each board of county commissioners shall have authority to have such elections or referendums conducted by the board of elections of its county under the provisions set forth in G.S. 115C-507.

(c) If twenty percent (20%) of the qualified voters of a county to be merged petition the board of county commissioners of their county for an election as to whether their county shall be included in the proposed merger, the board of county commissioners shall call an election on this question for its county under the provisions of G.S. 115C-507. The petition must be submitted to the board of county commissioners within 10 days following the public hearing required by G.S. 115C-67 on the proposed plan of merger. The board of county commissioners shall have authority to have such an election conducted by the board of election of its county under the provisions set forth in G.S. 115C-507.

(d) Boards of education considering a merger of two or more counties may spend money necessary for studying and preparing for such a merger. (1969, c. 828; 1981, c. 423, s. 1.)

§ 115C-69. Types of districts defined.

The term "district" here used is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary. There shall be three different kinds of districts:

- (1) The "nontax district" is a territorial division of a local school administrative unit under the control of the local board of education, having no special local tax fund voted by the people for supplementing State and county funds.

- (2) The "local tax district" is a territorial division of a local school administrative unit under the control of the county local board of education, having in addition to State and county funds, a special local tax fund voted by the people for supplementing State and county funds.
- (3) The "administrative district" is a territorial division of a county school administrative unit under the control of a county board of education which is established for administrative purposes and which consists of any combination of one or more local tax districts, nontax areas or bond districts of the county school administrative unit. (1955, c. 1372, art. 1, s. 7; 1965, c. 584, s. 1; 1981, c. 423, s. 1.)

§ 115C-70. Creation and modification of school districts by State Board.

(a) The State Board of Education, upon the recommendation of the county board of education, shall create in any county school administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary: Provided, that when changes in district lines are made between and among school districts that have voted upon themselves the same rate of supplemental tax, such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts: Provided, further, that nothing in this paragraph shall affect the right of any city school administrative unit or special tax district which now exists for the purpose of retiring debt service, to have the indebtedness of such district taken over by the county as provided by law, and nothing herein shall be construed to restrict the county board of education or the board of county commissioners in causing such indebtedness to be assumed by the county as provided by law.

The General Assembly shall not enact any local, private, or special act or resolution establishing or changing the lines of school districts.

(b) All pupils residing in a school district or attendance area, who have not been removed from school for cause, shall be entitled to all the privileges and advantages of the public schools of such district or attendance area in such school buildings to which they are assigned by local boards of education as provided in G.S. 115C-366. (1955, c. 1372, art. 8, s. 1; 1959, c. 432; 1967, c. 643, s. 2; 1981, c. 423, s. 1.)

Cross References. — For constitutional provision prohibiting special legislation changing school district lines, see Const., Art. II, § 24(1)(h).

§ 115C-71. Districts formed from portions of contiguous counties.

School districts may be formed out of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education. Rules for the organization, support and operation of districts so formed are subject to the agreement of the boards of education concerned, and as a guide to the working out of such agreements the formulas contained in G.S. 115C-510 should be followed as far as applicable. (1955, c. 1372, art. 8, s. 2; 1981, c. 423, s. 1.)

§ 115C-72. Consolidation of districts and discontinuance of schools.

County boards of education shall have the power and authority to consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it: Provided, existing schools having suitable buildings shall not be abolished until the county board of education has made ample provisions for transferring all children of said school to some other school.

In determining whether two or more public schools shall be consolidated, or in determining whether or not a school shall be closed and the pupils transferred therefrom, the State Board of Education and the boards of education of the several counties shall observe and be bound by the following rules:

- (1) In any question involving the discontinuance or consolidation of any high school with an average daily attendance of 60 or more pupils, the board of education of the county in which such school is located and the State Board of Education shall cause a thorough study of such school to be made, having in mind primarily the welfare of the students to be affected by a proposed consolidation and including in such study, among other factors, geographic conditions, anticipated increase or decrease in school enrollment, the inconvenience or hardship that might result to the pupils to be affected by such consolidation, the cost of providing additional school facilities in the event of such consolidation, and the importance of such school to the people of the community in which the same is located and their interest in and support of same. Before the entry of any order of consolidation, the county board of education shall provide for a public hearing in regard to such proposed consolidation, at which hearing the county and State boards of education and the public shall be afforded an opportunity to express their views. Upon the basis of the study so made and after such hearing, said boards may, in the exercise of their discretion and by concurrent action, approve the consolidation proposed.
- (2) Provision shall not be made by the State Board of Education for the operation of a high school with an average daily attendance of less than 60 pupils unless the State Board of Education and the Superintendent of Public Instruction, after a careful survey by them, find that geographic or other conditions make it impractical to provide for such pupils otherwise. Upon such finding, the State Board of Education may make provision for the operation of such school.
- (3) Notwithstanding the limitations imposed by the provisions of subdivision (2) of this section, the State Board of Education shall make provision for the continued operation of any high school now operating in any county school administrative unit and having an average daily attendance of at least 45 but fewer than 60 pupils, and shall allot to such school the number of teachers to which it may be entitled pursuant to law and rules of the State Board of Education if the continued operation of such school be requested by the board of education of such county by the inclusion of such school in the organization statement for the following year filed pursuant to the provisions of law: Provided, however, that at the time of making such request, the county board of education presents to the State Board of Education a certified statement that it has on hand and allocated for such purpose sufficient funds to pay the salaries, in accordance with the State standard salary schedule, of such additional teachers for said school as may be

required in order to comply with minimum teacher requirements for a standard high school as now or hereafter defined and sufficient funds to pay the county's contribution for such teachers to the Teachers' and State Employees' Retirement System of North Carolina, as provided by G.S. 135-8(d) and that said county board of education will employ such teacher or teachers.

For the purpose of providing the funds required by the proviso of this subdivision, the boards of commissioners of the several counties are authorized to appropriate nontax funds, and the several county boards of education are authorized to accept and use privately donated funds.

- (4) The provisions of this section shall not deprive any local board of education of the authority to assign or enroll any and all pupils in schools in accordance with the provisions of G.S. 115C-366(b) and 115C-367 to 115C-370. (1955, c. 1372, art. 8, s. 3; 1981, c. 423, s. 1.)

§ 115C-73. Enlarging tax districts and city units by permanently attaching contiguous property.

The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city school administrative units, real property contiguous to said local tax districts or city school administrative units, upon the written petition of the owners thereof and the taxpayers of the families living on such real property, and there shall be levied upon the property of each individual in the area so attached, including landowners and tenants, the same tax as is levied upon other property in said district or unit: Provided, that such transfer shall be subject to the approval of the board of education of such city unit or the committee of such tax district, as the case may be: Provided, the petition must be signed by a majority of the persons who are the owners thereof and a majority of the taxpayers of the families living on such real property on the date the petition is filed with the county board of education: Provided, further, that a person or corporation owning only an easement in real property shall not be considered an owner of said property within contemplation of this section: Provided, further that no right of action or defense founded upon the invalidity of such transfer shall be asserted, nor shall the validity of such transfer be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 60 days after the approval of such transfer is given by the State Board of Education.

Any qualified voter residing in the area attached shall be permitted to vote in any election for members of the board of education having jurisdiction over the attached area. (1955, c. 1372, art. 8, s. 4; 1959, c. 573, s. 4; 1971, c. 672; 1973, c. 1155; 1981, c. 423, s. 1.)

§ 115C-74. School system defined.

The school system of each local school administrative unit shall consist of 12 years of study or grades, and shall be graded on the basis of a school year of not less than nine months. The system may be organized in one or two ways as follows: The first eight grades shall be styled the elementary school and the remaining four grades, the high school; or if more practicable, a junior high school may be formed by combining the first year of high school with both the seventh and eighth grades or with the eighth grade alone, and a senior high school which shall comprise the last three years of high school work. For purposes of Title V of the National Defense Education Act of 1958 (Public Law 85-864) the term "secondary school" shall be applicable to grades seven through 12. (1955, c. 1372, art. 1, s. 5; 1959, c. 573, s. 1; 1981, c. 423, s. 1.)

§ 115C-75. Recommended school classification.

The different types of public schools are classified and defined as follows:

- (1) An "elementary school" is a school which embraces a part or all of the eight elementary grades and which may have a kindergarten or other early childhood program.
- (2) A "high school" is a school which embraces a high school department above the elementary grades and which offers at least the minimum high school course of study prescribed by the State Board of Education.
- (3) A "union school" is a school which embraces both elementary and high school grades.
- (4) A "junior high school" is a school which embraces not more than the first year of high school with not more than the upper two elementary grades.
- (5) A "senior high school" is a school which embraces the tenth, eleventh and twelfth grades. (1955, c. 1372, art. 1, s. 6; 1959, c. 915, s. 1; 1963, c. 448, s. 24; 1969, c. 1213, s. 2; 1981, c. 423, s. 1.)

§§ 115C-76 to 115C-80: Reserved for future codification purposes.

SUBCHAPTER IV. EDUCATION PROGRAM.**ARTICLE 8.*****General Education.*****Part 1. Courses of Study.****§ 115C-81. Required curriculum.**

(a) **Standard Course of Study for Each Grade.** — Upon the recommendation of the Superintendent, the State Board of Education shall adopt a standard course of study for each grade in the elementary school and in the high school. In the course of study adopted by the Board, the Board may establish a program of continuous learning based upon the individual child's need, interest, and stages of development, so that the program has a nongraded structure of organization. These courses of study shall set forth what subjects shall be taught in each grade, and outline the basal and supplementary books on each subject to be used in each grade.

The Superintendent shall prepare a course of study for each grade of the school system which shall outline the appropriate subjects to be taught, together with directions as to the best methods of teaching them as guidance for the teachers. There shall be included in the course of study for each grade, outlines and suggestions for teaching the subject of Americanism; and in one or more grades, as directed by the Superintendent of Public Instruction, outlines for the teaching of the dangers of harmful or illegal drugs, including alcohol; and, in one or more grades at the high school level, outlines for the teaching of the free enterprise system.

Local boards of education shall require that all subjects in the course of study, except foreign languages, be taught in the English language, and any teacher or principal who shall refuse to conduct his recitations in the English language may be dismissed.

(b) **Subjects Taught in Public Schools.** — Local boards of education shall provide for the efficient teaching in each grade of all subjects included in the outline course of study prepared by the Superintendent of Public Instruction,

which course of study at the appropriate grade levels shall include instruction in Americanism, government of the State of North Carolina, government of the United States, fire prevention, and the dangers of harmful or illegal drugs including alcohol. The study of the free enterprise system, its history, theory, foundation, and the manner in which it operates, shall be included at the high school level. Nothing in this Chapter shall prohibit local boards of education from operating a nongraded system in which pupils are taught at their individual learning levels.

(c) Instruction in Music Education; Supervisors and Area Supervisors. — There shall organized and administered under the general supervision of the Superintendent of Public Instruction a program of music education in the public schools of the State, and in the various communities in which said public schools are located. The Department of Public Instruction is hereby authorized to employ a supervisor of music education and six area music supervisors in its program of promotion of music education. It shall be the duty of the supervisors to train leaders among the teachers, to hold conferences throughout the State with groups of teachers and demonstrate proper methods of teaching music, and to organize and direct leadership in music programs in the schools and in the communities of the State.

(d) Instruction in Physical Education and Health Education. — There shall be organized and administered under the general supervision of the Superintendent of Public Instruction a comprehensive program of physical education and of health education including scientific instruction in the dangers of harmful or illegal drugs including alcohol. It shall be the duty of teachers and principals in connection with this program to screen and observe all pupils in order to detect signs and symptoms of deviation from normal, and to record and report the results of their findings in accordance with the established policies and procedures and upon blanks furnished for this purpose. The Superintendent of Public Instruction, with the Department of Human Resources cooperating, shall make rules and regulations regarding screening and observation by teachers and for medical and psychiatric examination of pupils attending the public schools. Correction of chronic remediable defects for underprivileged children may be paid out of school health funds appropriated by the General Assembly to the State Board of Education for allocation to local school administrative units in accordance with policies agreed upon by the Superintendent of Public Instruction and the Department of Human Resources, and as otherwise provided by law. The Department of Human Resources shall provide free dental treatment for as many underprivileged school children as possible each year.

(e) School Health Education Program to Be Developed and Administered. —

- (1) A comprehensive school health education program shall be developed and taught to pupils of the public schools of this State from kindergarten through ninth grade. This program shall be developed over a 10-year period beginning July 1, 1978.
- (2) As used above, "comprehensive school health" includes the subject matter of mental and emotional health, drug and alcohol abuse prevention, nutrition, dental health, environmental health, family living, consumer health, disease control, growth and development, first aid and emergency care, and any like subject matter.
- (3) The development and administration of this program shall be the responsibility of each local school administrative unit in the State, a local school health education coordinator for each county, the Department of Public Instruction, and a State School Health Education Advisory Committee.
- (4) Each existing local school administrative unit is eligible to develop and submit a plan for a comprehensive school health education program which shall meet all standards established by the State Board of Education, and to apply for funds to execute such plans.

(5) The Department of Public Instruction shall supervise the development and operation of a statewide comprehensive school health education program including curriculum development, in-service training provision and promotion of collegiate training, learning material review, and assessment and evaluation of local programs in the same manner as for other programs. It is the intent of this legislation that a specific position or positions in the Department of Public Instruction shall be assigned responsibilities as set forth in this subsection.

(6) A State School Health Advisory Committee is hereby established.

a. The committee shall provide citizen input into the operations of the program, report annually to the State Board of Education on progress in accomplishing the provisions and intent of this legislation, provide advice to the department with regard to its duties under this subsection, and encourage development of higher education programs which would benefit health education in the public schools.

b. The committee shall meet as necessary but at least twice annually. It shall select annually a chairperson from among its own membership, each member having an equal vote and the chairperson shall appoint such subcommittees as may be necessary. Members of the committee shall serve without compensation; however, they shall be reimbursed by the Department of Public Instruction for travel and other expenses incurred in the performance of their duties as members of the committee, to the extent that funds are appropriated for this purpose.

c. The committee shall consist of 17 members: 10 appointed by the Governor, two by the State Board of Education, one by the Speaker of the House of Representatives, one by the President of the Senate, and three ex officio members: the Chief, Office of Health Education, Department of Human Resources; the Chief, State Health Planning and Development Agency, Department of Human Resources; and the Superintendent of Public Instruction, or their designees. The Governor's appointees shall be named in the following manner: one physician from a list of three names submitted by the North Carolina Medical Society; one physician from a list of three names submitted by the North Carolina Pediatric Society; one physician from a list of three names submitted by the North Carolina Chiropractic Association; one registered nurse from a list of three names submitted by the North Carolina Nurses' Association; one dentist from a list of three names submitted by the North Carolina Dental Society; one member from a list of three names submitted by the North Carolina Medical Auxiliary; one member from a list of three names submitted by the North Carolina Congress of Parents and Teachers, Inc.; one member from a list of three names submitted by the North Carolina Association for Health, Physical Education, and Recreation; one member from a list of three names submitted by the North Carolina Public Health Association; one member from a list of three names submitted by the North Carolina College Conference on Professional Preparation in Health and Physical Education. The State Board nominees shall represent local school administrative units and shall have been recommended by the Superintendent of Public Instruction. The Speaker's nominee shall be a member of the North Carolina House of Representatives and the President of the Senate's nominee shall be a member of the Senate.

d. The appointed members of the advisory committee shall serve for a term of three years. Appointed members may be reappointed up to a maximum of nine years of service. Vacancies shall be filled in the same manner as original appointments for the balance of the unexpired term.

(f) Establishment and Maintenance of Kindergartens. —

- (1) Local boards of education shall provide for their respective local school administrative unit kindergartens as a part of the public school system for all children living in the local school administrative unit who are eligible for admission pursuant to subdivision (2) of this subsection provided that funds are available from State, local, federal or other sources to operate a kindergarten program as provided in G.S. 115C-81(f) and 115C-82.

All kindergarten programs so established shall be subject to the supervision of the Department of Public Instruction and shall be operated in accordance with the standards adopted by the State Board of Education, upon recommendation of the Superintendent of Public Instruction.

Among the standards to be adopted by the State Board of Education shall be a provision that the Board will allocate funds for the purpose of operating and administering kindergartens to each school administrative unit in the State based on the average daily membership for the best continuous three out of the first four school months of pupils in the kindergarten program during the last school year in that respective school administrative unit. Such allocations are to be made from funds appropriated to the State Board of Education for the kindergarten program.

- (2) Any child who has passed the fifth anniversary of his birth on or before October 15 of the year in which he enrolls shall be eligible for enrollment in kindergarten.
- (3) Notwithstanding any other provision of law to the contrary, subject to the approval of the State Board of Education, any local board of education may elect not to establish and maintain a kindergarten program. Any funds allocated to a local board of education which does not operate a kindergarten program may be reallocated by the State Board of Education, within the discretion of the Board, to a county or city board of education which will operate such a program. (1955, c. 1372, art. 5, s. 20; art. 23, ss. 1, 5, 6; 1957, cc. 845, 1101; 1969, c. 487, ss. 1, 2; 1971, c. 356; 1973, c. 476, s. 128; 1975, c. 65, ss. 1, 2; 1977, 2nd Sess., c. 1256, s. 1; 1981, c. 423, s. 1.)

§ 115C-82. Maximum class size.

The maximum number of students per kindergarten class is 26 students per class. (1975, 2nd Sess., c. 983, c. 89; 1981, c. 423, s. 1.)

§ 115C-83. Observance of special days.

The Superintendent of Public Instruction is hereby authorized and directed to provide suitable material for the appropriate observance in all the public schools of the State of all special days which are celebrated from year to year. All literature necessary for the proper observance of the days specified in this section shall be prepared by the Superintendent of Public Instruction and printed at the expense of the State. The Superintendent of Public Instruction may fix a later or an earlier date for the observance of any special day, the observance of which is required for a specific date, if it shall appear to him to be more convenient; and he may combine the programs so as to require the observance of any two or more of the special days at the same time.

The special days appropriate for observance in North Carolina are:

- (1) North Carolina Day on October the twelfth.
- (2) Temperance or Law and Order Day on the fourth Friday in January.
- (3) Arbor Day on the Friday following the fifteenth day of March.
- (4) The birthdays of George Washington, Robert Edward Lee, and Thomas Jonathan (Stonewall) Jackson.
- (5) Veterans Day, Memorial Day, and such other days as may be deemed of educational and patriotic value to the children and citizens of the State. (1955, c. 1372, art. 23, s. 7; 1981, c. 423, s. 1.)

Part 2. Calendar.

§ 115C-84. Length of school day, month, and term; Veterans Day.

(a) School Day. — The length of the school day shall be determined by the several local boards of education for all public schools in their respective local school administrative units, and the minimum time for which teachers shall be employed in the schoolroom or on the grounds supervising the activities of children shall not be less than six hours: Provided, the several local boards of education may adopt rules and regulations allowing handicapped pupils, kindergarten pupils, and pupils attending the first, second, and third grades to attend school for a period less than six hours. The superintendent of the several local boards of education, in the event of an emergency, act of God, or any other conditions requiring the termination of classes before six hours have elapsed, may suspend the operation of any school for that particular day without loss of credit to the pupil or loss of pay to the teacher.

(b) School Month. — A school month shall consist of 20 teaching days. School shall not be taught on Saturdays unless the needs of agriculture, or other conditions in the unit or district make it desirable that school be taught on such days. Whenever it is desirable to complete the school term of 180 days in a shorter term than nine calendar months, the board of education of any local school administrative unit may, in its discretion, require that school shall be taught on legal holidays, except Sundays, and in accordance with the custom and practice of such community.

(c) School Term. — There shall be operated in every school in the State a uniform school term of 180 days for instructing pupils: Provided, that the State Board of Education, or the board of education of any local school administrative unit with the approval of the State Board of Education, may suspend the operation of any school in such units, not to exceed a period of 60 days and said term of 180 days, when in the sound judgment of the State Board of Education, or the board of education of any local school administrative unit with the approval of the State Board of Education, conditions justify such suspension: Provided, further, that when the operation of any school is suspended the period of suspension shall be deducted from the total of 180 days included for each school year operation, all teachers shall be entitled to normal pay for the days of school of the suspended term, not to exceed a period of 15 school days during the school term.

Full authority is hereby given to the State Board of Education during any period of emergency to order general, and if necessary, extended recesses or adjournment of the public schools in any section of the State where the planting or harvesting of crops or any emergency conditions make such action necessary.

(d) Standard Class Duration. — Classes in basic academic courses in grades seven through nine of departmentalized public schools shall be limited to one

hour's duration unless the specific approval of the State Board of Education is obtained in advance for a longer duration.

(e) **Fixing Time of Opening and Closing Schools.** — The time of opening and closing the public schools shall be fixed and determined by local boards of education in their respective administrative units. Different opening and closing dates may be fixed for schools in the same administrative unit but all schools using the same buses for transportation of pupils must open and close at the same time.

(f) **Veterans Day.** — Veterans Day shall be a holiday for all children enrolled in the public schools, but shall be a work day for all school employees, unless designated as a holiday by the local board of education. (1955, c. 1372, art. 5, ss. 18, 19; 1957, c. 262; 1963, c. 425; c. 1223, s. 2; 1965, c. 1185, s. 1; 1969, c. 517, s. 2; c. 678; 1971, c. 85; c. 90, s. 1; 1973, c. 1137; 1977, c. 1128; 1979, c. 1069, s. 1.1; 1981, c. 423, s. 1.)

Part 3. Textbooks.

§ 115C-85. Textbook needs are determined by course of study.

When the State Board of Education has adopted, upon the recommendation of the Superintendent of Public Instruction, a standard course of study at each instructional level in the elementary school and the secondary school, setting forth what subjects shall be taught at each level, it shall proceed to select and adopt textbooks. Textbooks adopted in accordance with the provisions of this Part shall be used by the public schools of the State. (1955, c. 1372, art. 24, s. 1; 1959, c. 693, s. 1; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-86. State Board of Education to select and adopt textbooks.

The Board shall select and adopt for a period determined to be most advantageous to the State public school system for the exclusive use in the public schools of North Carolina the basic textbooks or series of books needed for instructional purposes at each instructional level on all subject matter required by law to be taught in elementary and secondary schools of North Carolina. (1955, c. 1372, art. 24, s. 2; 1959, c. 693, s. 2; 1965, c. 584, s. 18; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-87. Appointment of Textbook Commission.

Shortly after assuming office, the Governor shall appoint a Textbook Commission of 14 members who shall hold office for four years, or until their successors are appointed and qualified. The members of the Commission shall be appointed by the Governor upon recommendation of the Superintendent. Six of these members shall be teachers or principals in the elementary grades; five shall be teachers or principals in the high school grades; one shall be a superintendent of a local school administrative unit; one shall be the parent of an elementary student, grades K-6, at the time of appointment; and one shall be the parent of a high school student, grades 7-12, at the time of appointment. The Governor shall fill all vacancies by appointment for the unexpired term. The Commission shall elect a chairman, subject to the approval of the Superintendent. The members shall be entitled to compensation for each day spent on the work of the Commission as approved by the Board and to reimbursement for travel and subsistence expense incurred in the performance

of their duties at the rates specified in G.S. 138-5(a). Such compensation shall be paid from funds available to the State Board of Education. (1955, c. 1372, art. 24, s. 3; 1969, c. 519, s. 1; 1977, c. 1113; 1981, c. 423, s. 1.)

§ 115C-88. Commission to evaluate books offered for adoption.

The members of the Commission who are teachers, principals or the parent of students in the elementary grades shall evaluate all textbooks offered for adoption in the elementary grades. The members who are teachers, principals or the parent of students in the high schools shall evaluate all books offered for adoption in the high school grades.

Each member shall examine carefully and file a written evaluation of each book offered for adoption in the category for which he is responsible.

The evaluation report shall give special consideration to the suitability of the book to the instructional level for which it is offered, the content or subject matter, and other criteria prescribed by the Board.

Each evaluation report shall be signed by the member making the report and filed with the Board not later than a day fixed by the Board when the call for adoption is made. (1955, c. 1372, art. 24, s. 4; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-89. Selection of textbooks by Board.

At the next meeting of the Board after the reports have been filed, the Textbook Commission and the Board shall jointly examine the reports. From the books evaluated the Board shall select those that it thinks will meet the teaching requirements of the State public schools in the instructional levels for which they are offered. The Board shall then request sealed bids from the publishers on the selected books.

The Board shall make all necessary rules and regulations concerning requests for bids, notification to publishers of calls for adoption, execution and delivery of contracts, requirement of performance bonds, cancellation clauses, and such other material matters as may affect the validity of the contracts. (1955, c. 1372, art. 24, s. 5; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-90. Adoption of textbooks and contracts with publishers.

The publishers' sealed bids shall be opened in the Board's presence at the next regular meeting after the Board has requested the submission of bids. The Board may then adopt the books required by the courses of study and enter into contracts with the publisher of adopted books. It may refuse to adopt any of the books offered at the prices bid and call for new bids. When bids are accepted and a contract entered into, the contract may require, in the Board's discretion, that the total sales of each book in the State of North Carolina be reported annually to the Board. (1955, c. 1372, art. 24, s. 6; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-91. Continuance and discontinuance of contracts with publishers.

When an existing or future contract expires, the Board may, with the publisher's approval, continue the contract for any particular book or books for a period not less than one or more than five years. If a publisher desires to terminate a contract that has been extended beyond the original contract

period, he shall give notice to the Board 90 days prior to May 1. The Board may then proceed to a new adoption. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-92. Procedure for change of textbook.

The Superintendent may at any time communicate to the Board that a particular book is unsatisfactory for the schools, whereupon the Board may call for a new selection and adoption. If the Board votes to change a textbook, it shall give the publisher 90 days' notice prior to May 1, after which it may adopt a new book or books on the subject for which a book is sought. (1955, c. 1372, art. 24, s. 7; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-93. Advice from and suits by Attorney General.

The form and legality of contracts between the Board and publishers of textbooks shall be subject to the approval of the Attorney General.

When requested by the Board, the Attorney General shall bring suit against any publisher who fails to keep his contract as to prices, distribution, adequate supply of books in the edition adopted, or in any other way violates the terms of his contract. The suit shall be brought for an amount sufficient to enforce the contract or to compensate the State for any loss sustained by the publisher's failure to keep his contract. (1955, c. 1372, art. 24, s. 8; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-94. Publishers to register.

Any publisher who submits books for adoption shall register in the office of the Superintendent of Public Instruction the names of all agents or other employees authorized to represent that company in the State, and this registration list shall be open to the public for inspection. (1955, c. 1372, art. 24, s. 9; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-95. Sale of books at lower price reduces price to State.

Every contract made by the Board with the publisher of any school textbook on the State-adopted list shall be deemed to have written therein a condition providing that if that publisher, during the life of his contract with this State, contracts with any other governmental unit or places that textbook on sale anywhere in the United States for a price less than that stipulated in his contract with the State of North Carolina, the publisher shall immediately furnish that textbook to this State at a price not greater than that for which the book is furnished, sold, or placed on sale anywhere else in the nation. (1955, c. 1372, art. 24, s. 10; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-96. Powers and duties of the State Board of Education in regard to textbooks.

The children of the public elementary and secondary schools of the State shall be provided with free basic textbooks within the appropriation of the General Assembly for that purpose. The State Board of Education is directed to request sufficient appropriations from the General Assembly to implement this directive.

The State Board of Education shall administer a fund and establish rules and regulations necessary to:

- (1) Acquire by contract such basic textbooks as are or may be on the adopted list of the State of North Carolina which the Board finds necessary to meet the needs of the State public school system and to carry out the provisions of this Part.
- (2) Provide a system of distribution of these textbooks and distribute the books that are provided without using any depository or warehouse facilities other than those operated by the State Board of Education.
- (3) Provide for the free use, with proper care and return, of elementary and secondary basic textbooks. The title of said books shall be vested in the State. (1955, c. 1372, art. 25, s. 1; 1965, c. 584, s. 19; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-97. State Board of Education authorized to discontinue handling supplementary and library books.

The State Board of Education may discontinue the adoption of supplementary textbooks and, at the expiration of existing contracts, may discontinue the purchase, warehousing, and distribution of supplementary textbooks. The Board may also discontinue the purchase and resale of library books. Funds appropriated to the State Board of Education for supplementary textbooks shall be transferred to the State Public School Fund for allotment to each local school administrative unit, based on its average daily membership, for the purchase of supplementary textbooks, library books, periodicals, and other instructional materials. (1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-98. Local boards of education to provide for local operation of the textbook program and the selection and procurement of other instructional materials.

(a) Local boards of education shall adopt rules and regulations not inconsistent with the policies of the State Board of Education concerning the local operation of the textbook program.

(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, and other instructional materials needed for instructional purposes in the public schools of their units. Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks.

(c) Funds allocated by the State Board of Education or appropriated in the current expense or capital outlay budgets of the local school administrative units, may be used for the above-stated purposes. (1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-99. Legal custodians of books furnished by State.

Local boards of education are the custodians of all books furnished by the State. They shall provide adequate and safe storage facilities for the proper care of these books and emphasize to all students the necessity for proper care of textbooks. (1955, c. 1372, art. 25, s. 3; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-100. Rental fees for textbooks prohibited; damage fees authorized.

No local board of education may charge any pupil a rental fee for the use of textbooks. Damage fees may be charged for abuse or loss of textbooks under rules and regulations promulgated by the State Board of Education. All money collected on State-owned books as damage fees or from the sale of books under the provisions of this Part shall be paid quarterly as collected to the State Board of Education. (1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-101. Duties and authority of superintendents of local school administrative units.

The superintendent of each local school administrative unit, as an official agent of the State Board of Education, shall administer the provisions of this Part and the rules and regulations of the Board insofar as they apply to his unit. The superintendent of each local school administrative unit shall have authority to require the cooperation of principals and teachers so that the children may receive the best possible service, and so that all the books and moneys may be accounted for properly. If any principal or teacher fails to comply with the provisions of this section, his superintendent shall withhold his salary vouchers until the duties imposed by this section have been performed.

If any superintendent fails to comply with the provisions of this section, the State Superintendent, as secretary to the State Board of Education, shall notify the State Board of Education and the State Treasurer. The State Board and the State Superintendent shall withhold the superintendent's salary vouchers, and the State Treasurer shall make no payment until the State Superintendent notifies him that the provisions of this section have been complied with. (1955, c. 1372, art. 25, s. 8; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

§ 115C-102. Right to purchase.

Any parent, guardian, or person in loco parentis may purchase any instructional material needed for any child in the public schools of the State from the board of education of the local school administrative unit in which the child is enrolled or, in the case of basic textbooks, from the State Board of Education. (1955, c. 1372, art. 25, s. 2; 1969, c. 519, s. 1; 1981, c. 423, s. 1.)

Part 4. Fees.

§ 115C-103. Fees.

Fees, charges and costs may be collected from students and school personnel in accordance with the provisions of G.S. 115C-47(6). (1981, c. 423, s. 1.)

Part 5. Interstate Compact on Education.

§ 115C-104. Enactment of Compact.

The Compact for Education is hereby entered into and enacted into law, with all jurisdictions legally joining therein, in the form substantially as follows:

"COMPACT FOR EDUCATION.

Article I. Policy and Purpose.

It is the purpose of this Compact to:

- (1) Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.
- (2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.
- (3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.
- (4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous qualitative and quantitative advances in educational opportunities, methods and facilities.
- (5) It is the policy of this Compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.
- (6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state which are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this Compact, "state" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

- (1) The education commission of the states, hereinafter called "the commission," is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a state agency or institution, designated by the governor,

having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed 10 nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

- (2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(10).
- (3) The commission shall have a seal.
- (4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.
- (5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.
- (6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.
- (7) The commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.
- (8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.
- (9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

- (10) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the Compact, the commission shall have authority to:

- (1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.
- (2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.
- (3) Develop proposals for adequate financing of education as a whole and at each of its many levels.
- (4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the purposes and policies of this Compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.
- (5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.
- (6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this Compact.

Article V. Cooperation with Federal Government.

- (1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed 10 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representatives shall have a vote on the commission.
- (2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

- (1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this Compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and 16 for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary

notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

- (2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.
- (3) The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

- (1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.
- (2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.
- (3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(7) of this Compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III(7) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.
- (5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties' Entry into and Withdrawal.

- (1) This Compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term "governor," as used in this Compact, shall mean the closest equivalent official of such jurisdiction.

- (2) Any state or other eligible jurisdiction may enter into this Compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.
- (3) Adoption of the Compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this Compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.
- (4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters. (1967, c. 1020; 1981, c. 423, s. 1.)

§ 115C-105. North Carolina Education Council; bylaws.

(a) There is hereby established the North Carolina Education Council composed of the members of the education commission of the states representing this State, and not exceeding five other persons appointed by the Governor for terms of three years. Such other persons shall be selected so as to be broadly representative of professional and lay interests within this State having the responsibilities for, knowledge with respect to, and interest in educational matters. The Governor shall serve as chairman of the North Carolina Education Council or any person that the Governor may designate shall serve as chairman. The chairman of the State Board of Education, the Superintendent of Public Instruction, the chairman of the Board of Governors of The University of North Carolina, and the President of The University of North Carolina shall be ex officio members of the North Carolina Education Council. The council shall meet on the call of its chairman or at the request of a majority of its members, but in any event the Council shall meet not less than three times in each year. The Council may consider any and all matters relating to the recommendations of the education commission of the states and the activities of the members in representing this State thereon.

(b) Pursuant to Article III(9) of the Compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. (1967, c. 1020; 1971, c. 1244, s. 14; 1981, c. 423, s. 1.)

ARTICLE 9.

Special Education.

Part 1. State Policy.

§ 115C-106. Policy.

(a) The General Assembly of North Carolina hereby declares that the policy of the State is to ensure every child a fair and full opportunity to reach his full potential and that no child as defined in this section and in G.S. 115C-122 shall be excluded from service or education for any reason whatsoever. This policy shall be the practice of the State for children from birth through age 21 and the State requires compliance by all local education agencies and local school administrative units, all local human resources agencies including, but not limited to, local health departments, local social service departments, community mental health centers and all State departments, agencies, institutions except institutions of higher education, and private providers which are recipients of general funds as these funds are defined in G.S. 143-1.

(b) The policy of the State is to provide a free appropriate publicly supported education to every child with special needs. The purpose of this Article is to (i) provide for a system of special educational opportunities for all children requiring special education, hereinafter called children with special needs; (ii) provide a system for identifying and evaluating the educational needs of all children with special needs; (iii) require evaluation of the needs of such children and the adequacy of special education programs before placing children in the programs; (iv) require periodic evaluation of the benefits of the programs to the children and of the nature of the children's needs after placement; (v) prevent denials of equal educational opportunity on the basis of physical, emotional, or mental handicap; (vi) assure that the rights of children with special needs and their parents or guardians are protected; (vii) ensure that there be no inadequacies, inequities, and discrimination with respect to children with special needs; and (viii) bring State law, regulations, and practice into conformity with relevant federal law. (1973, c. 1293, ss. 2-4; 1975, c. 563, ss. 1-5; 1977, c. 927, ss. 1, 2; 1979, 2nd Sess., c. 1295; 1981, c. 423, s. 1.)

§ 115C-107. Children can learn.

The General Assembly finds that all children with special needs are capable of benefitting from appropriate programs of special education and training and that they have the ability to be educated and trained and to learn and develop. Accordingly, the State has a duty to provide them with a free appropriate public education. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-108. Definition of special education and related services.

The term "special education" means specially designed instruction, at no cost to the parents or guardians, to meet the unique needs of a special needs child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term also includes speech pathology, audiology, occupational and physical therapy. The term "related services" means transportation and such developmental, corrective and other supportive services as are required to assist a special needs child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, coun-

selling services, and medical services for diagnostic or evaluation purposes only. The term also includes school social work services, parent counseling and training, providing parents with information about child development and assisting parents in understanding the special needs of their child. Other similar services, materials and equipment may be provided as approved by regulations adopted by the State Board of Education. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-109. Definition of children with special needs.

The term "children with special needs" includes, without limitation, all children between the ages of five and 18 who because of permanent or temporary mental, physical or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded, epileptic, learning disabled, cerebral palsied, seriously emotionally disturbed, orthopedically impaired, autistic, multiply handicapped, pregnant, hearing-impaired, speech-impaired, blind or visually impaired, genetically impaired, and gifted and talented. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-110. Services mandatory; single-agency responsibility; State and local plans; census and registration.

(a) The Board shall cause to be provided by all local school administrative units and by all other State and local governmental agencies providing special education services or having children with special needs in their care, custody, management, jurisdiction, control, or programs, special education and related services appropriate to all children with special needs. In this regard, all local school administrative units and all other State and local governmental agencies providing special education and related services shall explore available local resources and determine whether the services are currently being offered by an existing public or private agency.

When a specified special education or related service is being offered by a local public or private resource, any unit or agency described above shall negotiate for the purchase of that service or shall present full consideration of alternatives and its recommendations to the Board. In this regard, a new or additional program for special education or related services shall be developed with the approval of the Board only when that service is not being provided by existing public or private resources or the service cannot be purchased from existing providers. Further, the Board shall support and encourage joint and collaborative special education planning and programming at local levels to include local administrative units and the programs and agencies of the Departments of Human Resources and Correction.

The jurisdiction of the Board with respect to the design and content of special education programs or related services for children with special needs extends to and over the Department of Human Resources and the Department of Correction.

All provisions of this Article that are specifically applicable to local school administrative units also are applicable to the Department of Human Resources and the Department of Correction and their divisions and agencies; all duties, responsibilities, rights and privileges specifically imposed on or granted to local school administrative units by this Article also are imposed on or granted to the Department of Human Resources and the Department of Correction and their divisions and agencies. However, with respect to children

with special needs who are residents or patients of any state-operated or state-supported residential treatment facility, including without limitation, a school for the deaf, school for the blind, mental hospital or center, mental retardation center, or in a facility operated by the Department of Correction or any of its divisions and agencies, the Board shall have the power to contract with the Department of Human Resources and the Department of Correction for the provision of special education and related services and the power to review, revise and approve said Departments' plans for special education and related services to those residents.

The Departments of Human Resources and Correction shall submit to the Board their plans for the education of children with special needs in their care, custody, or control. The Board shall have general supervision and shall set standards, by rule or regulation, for the programs of special education to be administered by it, by local educational agencies, and by the Departments of Human Resources and Correction. The Board may grant specific exemptions for programs administered by the Department of Human Resources or the Department of Correction when compliance by them with the Board's standards would, in the Board's judgment, impose undue hardship on such Department and when other procedural due process requirements, substantially equivalent to those of G.S. 115C-116, are assured in programs of special education and related services furnished to children with special needs served by such Department. Further, the Board shall recognize that inpatient and residential special education programs within the Departments of Human Resources and Correction may require more program resources than those necessary for optimal operation of such programs in local school administrative units.

Every State and local department, division, unit or agency covered by this section is hereinafter referred to as a "local educational agency" unless the text of this Article otherwise provides.

(b) The Board shall make and keep current a plan for the implementation of the policy set forth in G.S. 115C-106 (b). The plan shall include:

- (1) A census of the children with special needs in the State, as required by subsection (j) of this section;
- (2) A procedure for diagnosis and evaluation of each such child;
- (3) An inventory of the personnel and facilities available to provide special education for such children;
- (4) An analysis of the present distribution of responsibility for special education between State and local educational agencies, together with recommendations for any necessary or desirable changes in the distribution of responsibilities;
- (5) Standards for the education of children with special needs;
- (6) Programs and procedures for the development and implementation of a comprehensive system of personnel development; and
- (7) Any additional matters, including recommendations for amendment of laws, changes in administrative regulations, rules and practices and patterns of special organization, and changes in levels and patterns of education financial support.

(c) The Board shall annually submit amendments to or revisions of the plan required by subsection (b) to the Governor and General Assembly and make it available for public comment pursuant to subdivision (1) and for public distribution no less than 30 days before January 15 of each year. All such submissions shall set forth in detail the progress made in the implementation of the plan.

(d) The Board shall adopt rules or regulations covering:

- (1) The qualifications of and standards for certification of teachers, aides, speech clinicians, school psychologists, and others involved in the education and training of children with special needs;

(2) Minimum standards for the individualized education program for each child with special needs who receives special education or related services; and

(3) Such other rules or regulations as may be necessary or appropriate for carrying out the purposes of this Article. Representatives from the Departments of Human Resources and Correction shall be involved in the development of the standards outlined under this subsection.

(e) On or before October 15, each local educational agency shall report annually to the Board the extent to which it is then providing special education for children with special needs. The annual report also shall detail the means by which the local educational agency proposes to secure full compliance with the policy of this Article, including the following:

(1) A statement of the extent to which the required education and services will be provided directly by the agency;

(2) A statement of the extent to which standards in force pursuant to G.S. 115C-110 (b) (5) and (d) (2) are being met by the agency; and

(3) The means by which the agency will contract to provide, at levels meeting standards in force pursuant to G.S. 115C-110 (b) (5) and (d) (2), all special education and related services not provided directly by it or by the State.

(f) After submitting the report required by subsection (e), the local educational agency also shall submit such supplemental and additional reports as the Board may require to keep the local educational agency's plan current.

(g) By rule or regulation, the Board shall prescribe due dates not later than October 15 of each year, and all other necessary or appropriate matters relating to such annual and supplemental and additional reports.

(h) The annual report shall be a two-year plan for providing appropriate special education and related services to children with special needs. The agency shall submit the plan to the Board for its review, approval, modification, or disapproval. Unless thereafter modified with approval of the Board, the plan shall be adhered to by the local educational agency. The procedure for approving, disapproving, establishing, and enforcing the plan shall be the same as that set forth for the annual plan. The long-range plan shall include such provisions as may be appropriate for the following, without limitation:

(1) Establishment of classes, other programs of instruction, curricula, facilities, equipment, and special services for children with special needs; and

(2) Utilization and professional development of teachers and other personnel working with children with special needs.

(i) Each local educational agency shall provide free appropriate special education and related services in accordance with the provisions of this Article for all children with special needs who are residents of, or whose parents or guardians are residents of, the agency's district, beginning with children aged five. No matriculation or tuition fees or other fees or charges shall be required or asked of children with special needs or their parents or guardians except such fees or charges as are required uniformly of all public school pupils. The provision of free appropriate special education within the facilities of the Department of Human Resources shall not prevent that Department from charging for other services or treatment.

(j) The Board shall require an annual census of children with special needs, subdivided for "identified" and "suspected" children with special needs, to be taken in each school year. The census shall be conducted annually and shall be completed not later than October 15, and shall be submitted to the Governor and General Assembly and be made available to the public no later than January 15 annually.

In taking the census, the Board shall require the cooperation, participation, and assistance of all local educational agencies and all other State and local

governmental departments and agencies providing or required to provide special education services to children with special needs, and those departments and agencies shall cooperate and participate with and assist the Board in conducting the census.

The census shall include the number of children identified and suspected with special needs, their age, the nature of their disability, their county or city of residence, their local school administrative unit residence, whether they are being provided special educational or related services and if so by what department or agency, whether they are not being provided special education or related services, the identity of each department or agency having children with special needs in its care, custody, management, jurisdiction, control, or programs, the number of children with special needs being served by each department or agency, and such other information or data as the Board shall require. The census shall be of children with special needs between the ages of three and 21, inclusive.

(k) The Department shall monitor the effectiveness of individualized education programs in meeting the educational needs of children with special needs.

(l) The Board shall provide for procedures assuring that in carrying out the requirements of this Article procedures are established for consultation with individuals involved in or concerned with the education of children with special needs, including parents or guardians of such children, and there are public hearings, adequate notice of such hearings, and an opportunity for comment available to the general public prior to the adoption of the policies, procedures, and rules or regulations required by this Article.

(m) Children with special needs shall be educated in the least restrictive appropriate setting, as defined by the State Board of Education. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

Cross References. — As to nonapproval of contracts where standards not met, see § 115C-140.

CASE NOTES

Issue of Which Governmental Body to Pay Tuition. — The parents of a child with special educational needs failed to establish that their child was about to be denied continuance in a program appropriate to her special needs and did not have standing to raise the issue of whether the county board of education or the Department of Human Resources was

responsible for tuition expenses of their child at a private school for handicapped children to which their child had been assigned by the county school system, since the private school had remained in operation at all times prior to and during the action. *Linder v. Wake County Bd. of Educ.*, 50 N.C. App. 378, 273 S.E.2d 735 (1981).

Part 2. Nondiscrimination in Education.

§ 115C-111. Free appropriate education for all children with special needs.

No child with special needs between the ages specified by G.S. 115C-109 shall be denied a free appropriate public education or be prevented from attending the public schools of the local educational agency in which he or his parents or legal guardian resides or from which he receives services or from attending any other public program of free appropriate public education because he is a child with special needs. If it appears that a child should receive a program of free appropriate public education in a program operated by or under the supervision of the Department of Human Resources, the local educa-

tional agency shall confer with the appropriate Department of Human Resources staff for their participation and determination of the appropriateness of placement in said program and development of the child's individualized education program. The individualized education program may then be challenged under the due process provisions of G.S. 115C-116. Every child with special needs shall be entitled to attend such nonresidential schools or programs and receive from them free appropriate public education. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-112. Disciplinary suspensions.

If:

- (1) A local educational agency suspends or expels a child with special needs from a public school program for a period of more than 10 days or for consecutive periods that total more than 10 days either because he is or poses a risk of injury to himself or others or because he is or is threatening to disrupt substantially the education of others;
- (2) The risk of injury or disruption of education of others for which the child was suspended or expelled was caused by the lack of proper medication, appropriate educational services or ambulatory services for the child; and
- (3) The period of suspension or expulsion is one in which the child would be receiving special education or training in the unit but for the suspension or expulsion,

the agency, notwithstanding the suspension or expulsion, shall continue to provide the child with essential special education or related services during the period of suspension or expulsion and the parents may appeal, under G.S. 115C-116, any suspension of more than 10 consecutive days. The expulsion or suspension of a child with special needs shall not be subject to the provisions of G.S. 115C-116, and there shall be no requirement for continued special education or related services if the risk of injury or disruption of education of others for which the child was suspended or expelled was not caused by the lack of proper medication, appropriate educational services or ambulatory services for the child. These limitations on suspension and expulsion shall not interfere with the authority of the Department of Human Resources to release or discharge patients and residents from its programs when the primary purpose of admission has been achieved or when it is no longer feasible or advisable to continue the patient or resident in residence. (1977, c. 927, s. 1; 1979, c. 874, s. 2; 1981, c. 423, s. 1.)

§ 115C-113. Diagnosis and evaluation; individualized education program.

(a) Before taking any action described in subsection (b), below, each local educational agency shall cause a multi-disciplinary diagnosis and evaluation to be made of the child. The local educational agency shall use the diagnosis and evaluation to determine if the child has special needs, diagnose and evaluate those needs, propose special education programs to meet those needs, and provide or arrange to provide such programs. A multi-disciplinary diagnosis and evaluation is one which includes, without limitation, medical (if necessary), psychological (if necessary) and educational assessments and recommendations; such an evaluation may include any other assessments as the Board may, by rule or regulation, require.

All testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with special needs will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's

native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

(b) An initial multi-disciplinary diagnosis and evaluation based on rules developed by the Board shall be made before any such child is placed in a special education program, removed from such a program and placed in a regular school program, transferred from one type of special education program to another, removed from a school program for placement in a nonschool program, or otherwise tracked, classified, or treated as a child with special needs.

(c) Referral of any child shall be in writing, signed by the person requesting diagnosis and evaluation, setting forth the reasons for the request; it shall be sent or delivered to the child's teacher, the principal of the school to which the child is, has been or will be assigned, and the superintendent or other chief executive officer of the affected local educational agency.

Within 30 days of such referral, the local educational agency shall send a written notice to the parents or guardian describing the evaluation procedure to be followed and requesting consent for the evaluation. If the parents or guardian consent, the diagnosis and evaluation may be undertaken; if they do not, the local educational agency may obtain a due process hearing on the failure of the parent to consent under G.S. 115C-116.

The local educational agency shall provide or cause to be provided a diagnosis and evaluation appropriate to the needs of the child within 30 calendar days after sending the notice unless the parents or guardian have objected to such evaluation. At the end of such diagnosis and evaluation, the local educational agency shall offer a proposal for an educational program appropriate to the child's needs. If this proposal calls for a special educational program, it shall set forth the specific benefits expected from such a program, a method for monitoring the benefits, and a statement regarding conditions which will be considered indicative of the child's readiness for participation in regular classes.

Within 12 months after placement in a special education program, and at least annually thereafter, those people responsible for developing the child's individualized education program shall evaluate the child's progress and, on the basis of previously stated expected benefits, decide whether to continue or discontinue the placement or program. If the reevaluation indicates that the placement or program does not benefit the child, the appropriate reassignment or alteration in the prescribed program shall be recommended to the parents or guardian and their consent requested.

The local educational agency shall keep a complete written record of all diagnostic and evaluation procedures attempted, their results, the conclusions reached, and the proposals made.

(d) The local educational agency shall furnish the results, findings, and proposals based on the diagnosis and evaluation to the parents or guardian in writing in the parents' or guardian's native language or by their dominant mode of communication, within 15 calendar days after the diagnosis and evaluation are completed. Within 20 days after the diagnosis and evaluation are completed, it shall cause a conference to be scheduled between one of its staff competent to interpret the report of the diagnosis and evaluation and the child's parents or guardian. The conference shall be held no later than 30 calendar days after the date it is scheduled. At the conference, the report shall be explained to the parents or guardian. The parents or guardian may waive the interpretive conference.

(e) Each local educational agency shall make and keep current a list of all children evaluated and diagnosed pursuant to this section who are found to have special needs and of all children who are receiving home, hospital, institutional or other special education services, including those being educated within the regular classroom setting or in other special education programs.

(f) Each local educational agency shall prepare an individualized educational program for each child found to be a child with special needs. The individualized educational program shall be developed in conformity with Public Law 94-142 and the implementing regulations issued by the United States Department of Education and shall be implemented in conformity with timeliness set by that Department. The term "individualized educational program" means a written statement for each such child developed in any meeting by a representative of the local educational agency who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of such children, the teacher, the parents or guardian of such child, and, whenever appropriate, such child, which statement shall be based on rules developed by the Board. Each local educational agency shall establish, or revise, whichever is appropriate, the individualized educational program of each child with special needs at the beginning of each school year and will then review and, if appropriate revise, its provisions periodically, but not less than annually. In the facilities and programs of the Department of Human Resources, the individualized educational program shall be planned in collaboration with those other individuals responsible for the design of the total treatment or habilitation plan or both; the resulting educational, treatment, and habilitation plans shall be coordinated, integrated, and internally consistent. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-114. Records; privacy and expunction.

(a) No local educational agency may release to any persons other than the eligible student, his parents or guardian or any surrogate parent any records, data or information on any child with special needs except (i) as permitted by the prior written consent of the student, his parents or guardian or surrogate parent, (ii) as required or permitted by federal law, (iii) school officials within the local education agency who have legitimate educational interest, (iv) school officials of other local educational agencies in which the student intends to enroll, or (v) certain authorized representatives of the State and federal government who are determining eligibility of the child for aid, as provided under Public Law 93-380 or other federal law.

(b) The eligible student, his parents or guardian or surrogate parent shall have the right to read, inspect and copy all and any records, data and information maintained by a local educational agency with respect to the student, and, upon their request, shall be entitled to have those records, data and information fully explained, interpreted and analyzed for them by the staff of the agency. The parent or guardian or surrogate parent may demand that his request must be honored within not more than 45 days after it is made.

(c) The student, his parents or guardian or surrogate parent shall have the right to add to the records, data and information written explanations or clarifications thereof, and to cause the expunction of incorrect, outdated, misleading or irrelevant entries. If a local educational agency refuses to expunge incorrect, outdated, misleading or irrelevant entries after having been asked to do so by the parent, such person may obtain a due process hearing, under G.S. 115C-116, on the agency's refusal, and must request the hearing within 30 days after the agency's refusal. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-115. Placements in private schools, out-of-state schools and schools in other local educational agencies.

The Board shall adopt rules and regulations to assure that:

- (1) There be no cost to the parents or guardian for the placement of a child in a private school, out-of-State school or a school in other local educational agencies if the child were so placed by the Board or by the appropriate local educational agency as the means of carrying out the requirement of this Article or any other applicable law requiring the provision of special education and related services to children within the State.
- (2) No child shall be placed by the Board or by the local educational agency in a private or out-of-State school unless the Board has determined that the school meets standards that apply to State and local educational agencies and that the child so placed will have all the rights he would have if served by a State or local educational agency.
- (3) If the placement of the child in a private school, out-of-State school or a school in another local educational agency determined by the Superintendent of Public Instruction to be the most cost-effective way to provide an appropriate education to that child and the child is not currently being educated by the Department of Human Resources or the Department of Correction, the State will bear a portion of the cost of the placement of the child. The local school administrative unit shall pay an amount equal to what it receives per pupil from the State Public School Fund and from other State and federal funds for children with special needs for that child. The State shall pay the full cost of any remainder up to a maximum of fifty percent (50%) of the total cost. The State and local educational agencies shall be excused from payment of the costs of special education and related services in a private school if a child is placed in that school by his parents or guardian against the advice of the State or a local educational agency. (1977, c. 927, s. 1; 1979, 2nd Sess., c. 1299, s. 2; 1981, c. 423, s. 1.)

CASE NOTES

Effect of § 153A-248(a)(2). — While the general terms of § 153A-248(a)(2) could conceivably be construed to address the problem of inadequate educational opportunities for learning disabled children in the school system,

it is evident that the specific remedies prescribed in this chapter are controlling. *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979), (decided under former § 115-377).

Part 3. Appeals.

§ 115C-116. Exceptional children; special program; dissatisfaction with assignment; right to appeal.

(a) **Right of Appeal.** — A child, his parent, his guardian, or his surrogate parent, in the case of a child whose parent or guardian is unknown or unavailable or in the case of a child who is a ward of the State, may obtain review as herein provided of an action or omission by State or local authorities on the ground that the child has been or is about to be:

- (1) Denied entry or continuance in a program appropriate to his condition and needs;
- (2) Placed in a program which is inappropriate, unsuitable, or inadequate to his condition and needs; or
- (3) Assigned to a special program when he is not a child with special need.

(b) The parent or guardian of a child placed or denied placement in a program shall be notified promptly, via parent or guardian conference, or by registered or certified mail, return receipt requested, of his placement, denial

or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to review of the determination and of the procedure for obtaining such review. The notice shall contain information that a hearing may be had upon written request, no more than 30 days from the date on which the notice was received. This hearing shall be before an impartial hearing officer appointed by the local school board, the Secretary of Human Resources or the Secretary of Corrections depending on which agency has jurisdiction. The parent or guardian of a child or the local education agency may, upon written request, not more than 30 days from the date of a decision, appeal the decision of the hearing officer to the State Superintendent of Public Instruction. Any appeal of the decision of the State Superintendent of Public Instruction to the General Court of Justice must be filed within 30 days after notice of the decision.

(b1) In addition to any other subpoenas that are authorized to be issued by law, a local board of education or its designee may issue subpoenas upon its own motion or upon a written request. When the written request is made by a party to the hearing, the board or its designee shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the board or its designee shall revoke a subpoena if, upon a hearing the board or its designee finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees and officials or employees of a local board of education who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for their witness days. Subject to availability of funds, travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

(c) A surrogate parent may not be an employee of the State or any local government educational or human resources agency responsible for or involved in the education or care of the child. In the case of an appeal from action or omission by the State or local government education agency the surrogate parent shall be appointed from a group of people selected by the Superintendent of Public Instruction, and in the case of an appeal from an action or omission by the State or a local government human resources agency, from a group of people selected by the Secretary of the Department of Human Resources. Both the Superintendent and the Secretary shall upon ratification of this subsection establish procedures, pursuant to their powers under subsection (g) of this section, to ensure that every child in need of a surrogate parent is provided with one. The surrogate parent shall represent the child in the appeal and subsequent proceedings arising therefrom.

(d) All hearings shall be closed unless otherwise requested by the parent or guardian of a child.

(e) Ordinarily no change in the program assignment or status of a child with special needs shall be made within the period afforded the parent or guardian to request a hearing, except that such change may be made with the written consent of the parent or guardian. However, if the health or safety of the child or any other individual would be endangered by delaying the change in assignment, the change may be made sooner without prejudice to any rights that the child and his parent or guardian may have pursuant to this section or otherwise pursuant to law.

(f) The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed

was wholly or partially based or which could reasonably have a bearing on the correctness of the determination. At any hearing held pursuant to this section, the child and his parent or guardian shall be entitled to examine and cross-examine witnesses, to introduce evidence, to appear in person, and to be represented by counsel.

(g) The Superintendent and the Secretary shall make, amend or revise rules and regulations for the conduct of hearings authorized by this section and otherwise for the implementation of its purpose. Among other things, such rules and regulations shall allow the appointment of a hearing officer or board to hear such cases as may be appealed. Copies of such rules shall be filed in the office of the Attorney General as required by Chapter 150A.

(h) The determination of the appeal shall be subject to judicial review in the manner provided for in Article 4, Chapter 150A of the General Statutes.

(i) The remedies provided by this section are in addition to any other remedies which a child, his parent or guardian may otherwise have pursuant to law. (1973, c. 1293, s. 10; 1975, c. 151, ss. 1, 2; c. 563, ss. 8, 9; 1975, 2nd Sess., c. 983; ss. 79, 80; 1981, c. 423, s. 1; c. 497, ss. 1, 2.)

Cross References. — As to eligibility for admission to summer school, see § 115C-233.

As to assignment to special education programs, see § 115C-371.

Effect of Amendments. — Session Laws 1981, c. 497, deleted "before the local school board for educational matters or the Advocacy Council for Human Resource matters" following "may be had" and "less than 15 days nor" preceding "more than" in the third sentence of subsection (b), added the fourth sentence in subsection (b), inserted "or the local education

agency" near the beginning of the fifth sentence of subsection (b), substituted "the" for "said" following "appeal" in that sentence, inserted "of the hearing officer" and "State" in that sentence, deleted "or the Secretary of Human Resources" at the end of that sentence, substituted "the decision of the State Superintendent of Public Instruction" for "these decisions" and "be filed" for "occur" in the last sentence of subsection (b), substituted "the decision" for "such decision" at the end of that sentence, and added subsection (b1).

Part 4. Regional Educational Training Center.

§ 115C-117. Creation.

There is hereby established within the Department of Public Instruction a system of Regional Educational Training Centers. Said centers shall be equitably distributed across the State as shall be determined by the Superintendent, but such centers shall be located in reasonable proximity to one of the developmental evaluation centers operated by the Department of Human Resources. (1973, c. 580, ss. 1, 3; 1975, c. 896; 1981, c. 423, s. 1.)

§ 115C-118. Functions.

The centers shall have the following functions:

- (1) To provide in-service training to all special education teachers and other professionals as defined by the Superintendent.
- (2) To develop in kindergarten and primary grade teachers the necessary skills to detect potential special education needs and the capability to plan special educational programs.
- (3) To provide in-service training and consultative services to a parent or guardian of a child with special needs and to appropriate public school administrative and management personnel.
- (4) To work in concert with the various local human resources agencies to the end that multiple and duplicative services provided at various times and by various agencies of the State may be obviated.

- (5) To conduct an in-depth evaluation of the impact of in-service training on the delivery of services to children with special needs within the public schools on an annual basis in compliance with such rules and regulations as the Superintendent may promulgate. (1975, c. 896; 1981, c. 423, s. 1.)

§ 115C-119. Organization of centers.

Employees of the centers shall be employees of the Department of Public Instruction appointed by the Superintendent subject to the approval of the State Board. Employees of those centers now in place and operational shall be employees of the Department, and those centers now in place and operational shall fulfill the functions set forth for new centers. (1975, c. 896; 1981, c. 423, s. 1.)

§ 115C-120. Rules and regulations.

The Superintendent shall develop and promulgate appropriate rules and regulations for the operation of the centers subject to the approval of the State Board. Such rules and regulations shall prescribe the precise operational responsibility of the centers and shall include a description of the operational relationship that shall exist with the various local human resources agencies. (1975, c. 896; 1981, c. 423, s. 1.)

Part 5. Council on Educational Services for Exceptional Children.

§ 115C-121. Establishment; organization; powers and duties.

(a) There is hereby established an Advisory Council to the State Board of Education to be called the Council on Educational Services for Exceptional Children.

(b) The Council shall consist of 17 members to be appointed as follows: two members appointed by the Governor; two members of the Senate appointed by the Lieutenant Governor; two members of the House of Representatives appointed by the Speaker of the House; and 11 members appointed by the State Board of Education. Of those members of the Council appointed by the State Board one member shall be selected from each congressional district within the State, and the members so selected shall be composed of at least one person representing each of the following: handicapped individuals, parents or guardians of children with special needs, teachers of children with special needs, and State and local education officials and administrators of programs for children with special needs. The Council shall designate a chairperson from among its members. The designation of the chairperson is subject to the approval of the State Board of Education. The board shall promulgate rules or regulations to carry out this subsection.

Ex officio members of the Council shall be the following:

- (1) The Secretary of the Department of Human Resources or the Secretary's designee;
- (2) The Secretary of the Department of Correction or the Secretary's designee;
- (3) A representative from The University of North Carolina Planning Consortium for Children with Special Needs; and

- (4) The Superintendent of Public Instruction or the Superintendent's designee.

The term of appointment for all members except those appointed by the State Board of Education shall be for two years. The term for members appointed by the State Board of Education shall be for four years. No person shall serve more than two consecutive four-year terms.

Each Council member shall serve without pay, but shall receive travel allowances and per diem in the same amount provided for members of the North Carolina General Assembly.

(c) The Council shall meet in offices provided by the Department of Public Instruction on a date to be agreed upon by the members of the Council from meeting to meeting: Provided, however, that the Council shall meet no less than once every three months. The Department of Public Instruction shall provide the necessary secretarial and clerical staff and supplies to accomplish the objectives of the Council.

(d) The duties of the Council shall be to:

- (1) Advise the Board with respect to unmet needs within the State in the education of children with special needs, as defined in this Chapter.
- (2) Comment publicly on rules and regulations proposed for issuance by the Board regarding special education and related services and the procedures for issuing State and federal funds for special education and related services.
- (3) Assist the Board in developing and reporting such data and evaluations as may assist the Commissioner of Education in the performance of his duties under Part B, Education of the Handicapped Act, as amended by Public Law 94-142.
- (4) Comment publicly on State special education plans developed pursuant to Public Law 94-142 and State law. (1973, c. 1079, ss. 1-4; 1977, c. 646, ss. 1-5, 1981, c. 423, s. 1.)

Part 6. Range of Services Available.

§ 115C-122. Early childhood development program; evaluation and placement of children.

The General Assembly of North Carolina declares that the public policy of North Carolina is defined as follows to carry out the policies stated in G.S. 115C-106:

- (1) The State shall provide for a comprehensive early childhood development program by emphasizing preventative and remedial measures designed to provide the services which will enable children to develop to the maximum level their physical, mental, social, and emotional potentials and to strengthen the role of the family as the first and most fundamental influence on child development. The General Assembly finds that the complexity of early childhood development precludes the enactment of legislation which is of a sufficiently comprehensive nature to encompass all possible implications. The Departments of Public Instruction and Human Resources shall, therefore, jointly develop an early childhood development program plan with flexibility sufficient to meet the State's policy as set forth in this subdivision. Said plan shall provide for the operation of a statewide early childhood development program no later than June 30, 1983.

- (2) The State requires a system of educational opportunities for all children with special needs and requires the identification and evaluation of the needs of children and the adequacy of various education programs before placement of children, and shall provide for periodic evaluation of the benefits of programs to the individual child and the nature of the child's needs thereafter.
- (3) The State shall prevent denial of equal educational and service opportunity on the basis of national origin, sex, economic status, race, religion, and physical, mental, social or emotional handicap in the provision of services to any child. Each local school administrative unit shall develop program plans to meet the educational requirements of children with special needs and each local human resources agency shall develop program plans to meet the human service requirements of children with special needs in accordance with program standards and in a planning format as shall be prescribed by the State Board of Education and the Department of Human Resources respectively.

The General Assembly intends that the educational program and human service program requirements of Session Laws 1973, Chapter 1293, shall be realized no later than June 30, 1982. The General Assembly further intends that currently imposed barriers to educational and human service opportunities for children with special needs by reason of a single standardized test, income, federal regulations, conflicting statutes, or any other barriers are hereby abrogated; except that with respect to barriers caused by reason of income, it shall be permissible for the State or any local education agency or local human resources agency to charge fees for special services rendered, or special materials furnished to a child with special needs, his parents, guardian or persons standing in loco parentis unless the imposition of such fees would prevent or substantially deter the child, his parents, guardian, or persons standing in loco parentis from availing themselves of or receiving such services or materials.

- (4) It is recognized that children have a variety of characteristics and needs, all of which must be considered if the potential of each child is to be realized; that in order to accomplish this the State must develop a full range of service and education programs, and that a program must actually benefit a child or be designed to benefit a particular child in order to provide such child with appropriate educational and service opportunities. The General Assembly requires that all programs employ least restrictive alternatives as shall be defined by the Departments of Public Instruction and Human Resources. (1973, c. 1351, s. 1; 1981, c. 423, s. 1.)

Part 7. State Schools for Hearing-Impaired Children.

§ 115C-123. Establishment; operations.

There are established, and there shall be maintained, the following schools for the deaf: the Eastern North Carolina School for the Deaf at Wilson (K-12); the Central North Carolina School for the Deaf at Greensboro (K-8), and the North Carolina School for the Deaf at Morganton (K-12). The Department of Human Resources shall be responsible for the operation and maintenance of the schools.

The Board of Directors of the North Carolina Schools for the Deaf shall advise the Department and shall adopt rules and regulations concerning the schools as provided in G.S. 115C-124 and 143B-173. (1891, c. 399, s. 1; Rev., s.

4202; 1915, c. 14; C. S., s. 5888; 1957, c. 1433; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1; c. 635, s. 2.)

Effect of Amendments. — The 1981 amendment by c. 635, s. 2, effective July 1, 1981, rewrote the first sentence of the section. Session Laws 1981, c. 635, s. 6 provides: "The authority of the Department of Human Resources to maintain and operate and to make expenditures for the North Carolina School for the Deaf

at Morganton and the Eastern North Carolina School for the Deaf at Wilson from the effective date of Chapter 476, 1973 Session Laws [July 1, 1973], to the effective date of this act [July 1, 1981] is hereby granted, confirmed and validated.

§ 115C-124. Pupils admitted; education.

The Department of Human Resources shall according to such reasonable regulations as the Board of Directors may prescribe, on application, receive into the schools for the purposes of education all deaf children resident of the State who are between the ages of five and 18 years: Provided, that the Department of Human Resources may admit students who are not within the age limits set forth above when in its judgment, such admission will be in the best interests of the applicant and the facilities of the school permit such admission. Only those who are bona fide citizens or residents of North Carolina shall be eligible to and entitled to receive free tuition and maintenance. The Department may fix charges and the Board of Directors may prescribe rules whereby nonresident deaf children may be admitted, but in no event shall the admission of nonresidents in any way prevent the attendance of any eligible deaf child, resident of North Carolina. The Department shall provide for the instruction of all pupils in the branches of study now prescribed by law for the public schools of the State and in such other branches as may be of special benefit to the deaf.

The Department shall encourage the State to provide the classrooms with modern auditory training equipment, audiovisual media equipment, and any other special equipment to provide the best educational conditions for the deaf. The Department shall provide a teacher training program in the State. The Department shall provide for a comprehensive vocational and technical training program for boys and girls as may be useful to them in making themselves self-supporting. (1961, c. 968; 1963, c. 448, s. 28; 1969, c. 1279; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1.)

§ 115C-125. Free textbooks and State purchase and rental system.

The Schools for the Deaf shall have the right and privilege of participating in the distribution of free textbooks and in the purchase and rental system operated by the State of North Carolina in the same manner as any other public school in the State. (1943, c. 205; 1963, c. 448, s. 28; 1971, c. 1000; 1981, c. 423, s. 1.)

§ 115C-126. Agreements with local governing authorities.

The Department is authorized to make such agreements with the governing authority of any municipality, or of any county, as may be mutually agreed upon, to promote convenience and economy for joint water supply, lighted areas, use of sewage facilities, or any other utilities or facilities that may be necessary and as may be agreed upon. (1891, c. 399, ss. 8-10; Rev., s. 4205; C. S., s. 5893; 1963, c. 448, s. 28; 1971, c. 1000; 1973, c. 476, s. 165; 1981, c. 423, s. 1.)

§ 115C-126.1. Fees for athletic programs; appeal.

The Secretary of Human Resources may establish by regulation fees not to exceed one hundred dollars (\$100.00) per year to support the athletic program and after school student activities and an appeal process under chapter 150A by which a student unable to pay may prove that he is unable to pay and be relieved of the fee. (1981, c. 562, s. 3; c. 912, s. 2.)

Editor's Note. — This section was enacted and recodified as § 115C-126.1 by Session Laws as § 115-343 by Session Laws 1981, c. 562, s. 3, 1981, c. 912, s. 2.

Part 8. State School for Sight-Impaired Children.**§ 115C-127. Incorporation, name and management.**

The institution for the education of the blind, located in the City of Raleigh, shall be a corporation under the name and style of the Governor Morehead School, and shall be under the management of the Department of Human Resources and the director of the school. (1881, c. 211, s. 1; Code, s. 2227; Rev., s. 4187; 1917, c. 35, s. 1; C. S., s. 5872; 1957, c. 1434; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1975, c. 19, s. 39; 1981, c. 423, s. 1.)

§ 115C-128. Admission of pupils; how admission obtained.

The Department of Human Resources shall, on application, receive in the institution for the purpose of education all blind children who are residents of this State and who are between the ages of five and 18 years: Provided, that pupils who are not within the age limits above set forth may be admitted to said institution in cases in which the Department of Human Resources finds that the admission of such pupils will be beneficial to them and in cases in which there is sufficient space available for their admission in said institution: Provided, further, that the Department of Human Resources is authorized to make expenditures, out of any scholarship funds or other funds already available or appropriated, of sums of money for the use of out-of-state facilities for any student who, because of peculiar conditions or disability, cannot be properly educated at the school in Raleigh. (1881, c. 211, s. 5; Code, s. 2231; Rev., s. 4191; 1917, c. 35, s. 1; C. S., s. 5876; 1947, c. 375; 1949, c. 507; 1953, c. 675, s. 14; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 1279; 1973, c. 476, s. 164; 1981, c. 423, s. 1.)

§ 115C-129: Reserved for future codification purposes.

§ 115C-130. Admission of pupils from other states.

The Department of Human Resources may, on such terms as it deems proper and upon the receipt of tuition and necessary expenses as prescribed by the Department of Human Resources, admit as pupils persons of like infirmity from any other state but such power shall not be exercised to the exclusion of any child of this State, and the person so admitted shall not acquire the condition of a resident of the State by virtue of such pupilage. (1881, c. 211, s. 6; Code, s. 2232; Rev., s. 4193; C. S., s. 5878; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1981, c. 423, s. 1.)

§ 115C-131. Department of Human Resources may confer diplomas.

The Department of Human Resources may, upon the recommendation of the superintendent and faculty, confer such diplomas or marks of achievement upon its graduates as it may deem appropriate to encourage merit. (1881, c. 211, s. 7; Code, s. 2233; Rev., s. 4194; 1917, c. 35, s. 1; C. S., s. 5879; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1981, c. 423, s. 1.)

§ 115C-132. State Treasurer is ex officio treasurer of institution.

The State Treasurer shall be ex officio treasurer of the institution. He shall report to the Department of Human Resources at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. (1881, c. 211, s. 9; Code, s. 2235; Rev., s. 4196; C. S., s. 5881; 1963, c. 448, s. 28; 1969, c. 749, s. 2; 1973, c. 476, s. 164; 1981, c. 423, s. 1.)

§ 115C-133. When clothing, etc., for pupils paid for by county.

Where it shall appear to the satisfaction of the director of social services and the chairman of the board of county commissioners of any county in this State that the parents of any blind child residing in such county are then unable to provide such child with clothing or traveling expenses or both to and from the Governor Morehead School, or where such child has no living parent, or any estate of his own, or any person, or persons, upon which he is legally dependent who are able to provide expenses for such transportation and clothing, then upon the demand of the institution which such child attends or has been accepted for attendance, said demand being made through the State Auditor, the board of county commissioners of the county in which such child resides shall issue or cause to be issued its warrant payable to the State Auditor, same to be credited to the proper institution, for the payment of an amount sufficient to clothe and pay traveling expenses of said child. (1879, c. 332, s. 1; Code, s. 2238; Rev., s. 4199; Ex. Sess. 1908, c. 69; 1917, c. 35, s. 3; 1919, c. 183; C. S., s. 5885; 1927, c. 86; 1929, c. 181; 1961, c. 186; 1963, c. 448, s. 28; 1969, c. 749, s. 2; c. 982; 1981, c. 423, s. 1.)

Part 9. Central Orphanage of North Carolina.

§ 115C-134. Creation; powers.

The corporation created by Chapter 47, Private Laws of 1887, is hereby continued as a body corporate for a period of 60 years from March 8, 1927, under the name and style of "The Central Orphanage of North Carolina." The said corporation shall have power to receive, purchase, and hold property, real and personal, not to exceed in value one million dollars (\$1,000,000), to sue and be sued, to plead and be impleaded, to receive gifts, donations and appropriations, to contract, and to do all other acts usual and necessary in the conduct of such corporation, and to carry out the intent and purposes thereof under and as subscribed by the laws of North Carolina. (1927, c. 162, s. 1; 1963, c. 448, s. 28; 1965, c. 617, s. 2; 1981, c. 423, s. 1.)

§ 115C-135. Directors; selection, self-perpetuation, management of corporation.

The board of directors of the Central Orphanage of North Carolina shall consist of 13 members which shall organize by the election of a president and secretary and shall make all necessary bylaws and regulations for the convenient and efficient management and control of the affairs of said corporation, including the method by which successors to the directors herein named shall be chosen. (1927, c. 162, s. 2; 1963, c. 448, s. 28; 1965, c. 617, s. 2; 1969, c. 1279; 1981, c. 423, s. 1.)

§ 115C-136. Board of trustees; appropriations; treasurer; board of audit.

Five members of said board of directors shall also serve as a board of trustees of said Central Orphanage of North Carolina. The said board of trustees so appointed shall serve for a term of four years and until their successors are chosen. All appropriations made by the General Assembly to the said Central Orphanage of North Carolina shall be under the control of the board of trustees, and said appropriations shall be expended under their supervision and direction. The board of trustees shall select one of their members as a treasurer of the fund appropriated to the institution by the General Assembly and also not more than two persons to act as a board to audit the expenditure of such appropriation. The treasurer shall receive a salary of one hundred dollars (\$100.00) per year for his services and members of the board of audit a salary not to exceed one hundred fifty dollars (\$150.00) per year. The treasurer shall give a bond payable to the State of North Carolina in a surety company in such sum as the board of trustees may require, the annual premium to be paid out of the funds of the said Orphanage. (1927, c. 162, s. 3; 1963, c. 448, s. 28; 1965, c. 617, s. 2; 1981, c. 423, s. 1.)

§ 115C-137. Training of orphans.

The said corporation shall receive, train and care for such orphan children of the State of North Carolina as under the rules and regulations of said corporation may be deemed practical and expedient, and impart to them such mental, moral and industrial education as may fit them for usefulness in life. (1927, c. 162, s. 4; 1963, c. 448, s. 28; 1969, c. 1279; 1981, c. 423, s. 1.)

§ 115C-138. Control over orphans.

The said corporation shall have power to secure the control of such orphans by the written consent of their nearest of kin of those having control of such orphans, and shall receive such others as may be committed to its care under the appropriate laws of the State; and it shall be unlawful for any person or persons to interfere in any way with said corporation in the management of such orphans after they shall have been entered and received by it. The board of directors shall make all necessary rules and regulations for the reception and discharge of children from said Orphanage. (1927, c. 162, s. 5; 1963, c. 448, s. 28; 1981, c. 423, s. 1.)

Part 10. State and Local Relationships.

§ 115C-139. Interlocal cooperation.

(a) The Board, any two or more local educational agencies and any such agency and any State department, agency, or division having responsibility for the education, treatment or habilitation of children with special needs are authorized to enter into interlocal cooperation undertakings pursuant to the provisions of Chapter 160A, Article 20, Part 1 of the General Statutes or into undertakings with a State agency such as the Departments of Public Instruction, Human Resources, or Correction, or their divisions, agencies, or units, for the purpose of providing for the special education and related services, treatment or habilitation of such children within the jurisdiction of the agency or unit, and shall do so when it itself is unable to provide the appropriate public special education or related services for such children. In entering into such undertakings, the local agency and State department, agency, or division shall also contract to provide the special education or related services that are most educationally appropriate to the children with special needs for whose benefit the undertaking is made, and provide such services by or in the local agency unit or State department, agency, or division located in the place most convenient to such children.

(b) Local educational agencies may establish special education and related programs for children with special needs aged birth through four and 19 through 21 inclusive. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-140. Contracts with private service-providers.

State departments, agencies and divisions and local educational agencies furnishing special education and related services to children with special needs may contract with private special education facilities or service providers to furnish such services as the public providers are unable to furnish. No contract between any public and private service provider shall be effective until it has received the prior written approval of the Board. The Board shall not withhold its approval of the contract unless the private facilities and providers do not meet the Board's standards established pursuant to G.S. 115C-110(a), (b)(5), and (d)(2). (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.

(a) Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal law, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar facility.

(b) The State Board of Education shall use State and federal funds appropriated for children with special needs to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. (1981, c. 859, s. 29.7.)

Editor's Note. — Session Laws 1981, c. 859, Session Laws 1981, c. 859, s. 97, contains a s. 98, makes the act effective July 1, 1981. severability clause.

Part 11. Rules and Regulations.

§ 115C-141. Board rules and regulations.

The Board shall adopt rules and regulations for the administration of this Article. The Board shall provide technical assistance to the various concerned agencies at their request. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

Part 12. Nonreduction Provision.

§ 115C-142. Nonreduction.

Notwithstanding any of the other provisions of this Article, it is the intent of the General Assembly that funds appropriated by it for the operation of programs of special education and related services by local school administrative units not be reduced; rather, that adequate funding be made available to meet the special educational and related services needs of children with special needs, without regard to which State or local department, agency, or unit has the child in its care, custody, control, or program. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

Part 13. Budget Analysis and Departmental Funding.

§ 115C-143. Budget analysis.

The Division of Fiscal Research of the Legislative Services Office of the General Assembly shall conduct an annual budget analysis of the budgets of the Departments of Human Resources and Correction to determine what funds are expended by those departments for programs of special education and related services for children with special needs, aged birth through 21, and shall submit a report of its analysis to the General Assembly, the Governor, and the State Board of Education and the Departments of Human Resources and Correction no later than October 1, of each year. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-144. Departmental requests.

All budget requests for funding of new or existing or for the expansion of existing programs of special education and related services for children with special needs, aged birth through 21, to be furnished or provided by the Departments of Human Resources and Correction shall be annually submitted by those departments to the Board for review and comment prior to presentation by the respective department to the Advisory Budget Commission. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§ 115C-145. Allocation of federal funds.

At such time as any federal moneys for the special education and related services for children with special needs are made available, these funds shall be allocated according to a formula designed by the Board not inconsistent with federal laws and regulations. Such formula shall insure equitable distribution of resources based upon the number of children with special needs served by

the respective agencies, and shall be implemented as funds are made available from federal and State appropriations. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§§ 115C-146 to 115C-150: Reserved for future codification purposes.

ARTICLE 10.

Vocational Education.

Part 1. Vocational Education Programs.

§ 115C-151. Statement of purpose.

It is the intent of the General Assembly that vocational education be an integral part of the educational process. The State Board of Education is authorized and directed to administer through local boards of education a comprehensive program of vocational education which shall be available to all students who desire it in the public secondary schools of this State. The purposes of vocational education in North Carolina public secondary schools shall be:

- (1) Vocational Skill Development. — To prepare individuals for paid or unpaid employment in recognized occupations, new occupations, and emerging occupations.
- (2) Preparation for Advanced Education. — To prepare individuals for participation in advanced or highly skilled vocational and technical education.
- (3) Pre-Vocational; Introductory. — To assist individuals in the making of informed and meaningful occupational choices.

It is also legislative intent to authorize the State Board of Education to support appropriate vocational education instruction and related services for individuals who have other specialized vocational education needs which can be fulfilled through a comprehensive vocational education program as designated by State Board of Education policy or federal vocational education legislation. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-152. Definitions.

The State Board of Education is authorized and directed to provide appropriate definitions to vocational education programs, services, and activities in grades 7-12 not otherwise included in this Part. As used in this Part, unless the context requires otherwise:

- (1) "Comprehensive vocational education" means instructional programs, services, or activities directly related to preparation for and placement in employment, for advanced technical education, or for the making of informed and meaningful occupational choices.
- (2) "Preparation for advanced education" means a program, service, or activity designed to prepare individuals for participation in advanced or highly skilled post-secondary and technical education programs leading to employment in specific occupations or a cluster of closely related occupations and for participation in vocational education teacher education programs.
- (3) "Pre-vocational; introductory" means an instructional program, service, or activity designed to familiarize individuals with the broad range of occupations for which special skills are required and the requisites for careers in such occupations.

- (4) "Vocational skill development" means a program, service, or activity designed to prepare individuals for paid or unpaid employment as semi-skilled or skilled workers, technicians, or professional-support personnel in recognized occupations and in new and emerging occupations including occupations or a trade, technical, business, health, office, homemaking, homemaking related, agricultural, distributive, and other nature. Instruction is designed to fit individuals for initial employment in a specific occupation or a cluster of closely related occupations in an occupational field. Such instruction includes education in manipulative skills, theory, auxiliary information, and other associated knowledges. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-153. Administration of vocational education.

The State Board of Education shall be the sole State agency for the State administration of vocational education at all levels, shall be designated as the State Board of Vocational Education, and shall have all necessary authority to cooperate with any and all federal agencies in the administration of national acts assisting vocational education, to administer any legislation pursuant thereto enacted by the General Assembly of North Carolina, and to cooperate with local boards of education in providing vocational and technical education programs, services, and activities for youth and adults residing in the areas under their jurisdiction. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-154. Duties of the State Board of Education.

In carrying out its duties, the State Board of Education shall have full authority to develop and implement such policies, rules, regulations, and procedures as necessary to ensure vocational education programs of high quality. The State Board of Education shall prepare a Master Plan for Vocational Education. Such plan, to be updated periodically, shall ensure minimally that:

- (1) Articulation will occur with institutions, agencies, councils, and other organizations having responsibilities for manpower development.
- (2) Business, industrial, agricultural, and lay representatives have been utilized in the development of decisions affecting vocational education programs and services.
- (3) Public hearings are conducted annually to afford the public an opportunity to express their views concerning the State Board's plan to suggest changes in the plan.
- (4) The plan describes the State's policy for vocational education and the system utilized for the delivery of vocational education programs, services, and activities.
- (5) A professionally and occupationally qualified staff is employed and organized in a manner to assure efficient and effective State leadership for vocational education. Provisions will be made for such functions as: planning, administration, supervision, curriculum development, research and evaluation, and such others as the State Board may direct.
- (6) An appropriate supply of qualified personnel is trained for program expansion and replacements through cooperative arrangements with institutions of higher education and other institutions or agencies, including where necessary financial support of programs and curriculums designed for the preparation of vocational administrators, supervisors, coordinators, instructors, and support personnel.
- (7) Minimum standards shall be prescribed for personnel employed at the State and local levels.

- (8) Local boards of education submit to the State Board of Education a local plan for vocational education which has been prepared in accordance with the procedures set forth in the Master Plan for Vocational Education.
- (9) Appropriate minimum standards for vocational education programs, services, and activities shall be established, promulgated, supervised, monitored, and maintained. Such standards shall specify such characteristics as program objectives, skill competencies, course sequence, program duration, class size, supervised on-the-job experiences, qualifications of instructors, and all other standards necessary to ensure that all programs conducted by local school administrative units shall be of high quality, relevant to student needs, and coordinated with employment opportunities.
- (10) A system of continuing qualitative and quantitative evaluation of all vocational education programs, services, and activities supported under the provisions of this Part shall be established, maintained, and utilized periodically. One component of such system shall be follow-up studies of former students of vocational education programs who have been out of school for one year, for three years, and for five years to ascertain the effectiveness of instruction, services, and activities. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-155. Acceptance of benefits of federal vocational acts.

The State of North Carolina, through the State Board of Education, shall be empowered to accept all the provisions and benefits of acts passed by the Congress of the United States providing federal funds for vocational and technical education programs: Provided, however, that the State Board of Education is not authorized to accept such funds upon any condition that the public schools of this State shall be operated contrary to any provision of the Constitution or statutes of this State. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-156. State funds for vocational education.

It is the intent of the General Assembly of North Carolina to appropriate funds for each fiscal year to support the purposes of vocational education as set forth in G.S. 115C-151. From funds appropriated, the State Board of Education shall establish a sum of money for State administration of vocational education and shall allocate the remaining sum on an equitable basis to local school administrative units, except that a contingency fund is established to correct excess deviations which may occur during the regular school year. In the administration of State funds, the State Board of Education shall adopt such policies and procedures as necessary to ensure that the funds appropriated are used for the purpose stated in this Part and consistent with the policy set forth in the Master Plan for Vocational Education. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-157. Responsibility of local boards of education.

Each local school administrative unit, shall provide free appropriate vocational education instruction, activities, and services in accordance with the provisions of this Part for all youth who elect such instruction and shall have responsibility for administering such in accordance with federal and State law and State Board of Education policies. (1977, c. 490, s. 2; 1981, c. 423, s. 1.)

§ 115C-158. Federal funds division.

The division between secondary and post-secondary educational systems and institutions of federal funds for which the State Board of Vocational Education has responsibility shall, within discretionary limits established by law, require the concurrence of the State Board of Education and the State Board of Community Colleges on and after January 1, 1981. The portion of the approved State Plan for post-secondary vocational education required by G.S. 115C-154 shall be as approved by the State Board of Community Colleges. (1979, 2nd Sess., c. 1130, s. 4; 1981, c. 423, s. 1.)

Part 2. Vocational Education Production Work Activities.

§ 115C-159. Statement of purpose.

It is the intent of the General Assembly that practical work experiences within the school and outside the school, which are valuable to students and which are under the supervision of a teacher, should be encouraged as a part of vocational education instruction in the public secondary schools when such experiences shall be organized and maintained to the best advantage of the vocational education programs. Local boards of education are authorized to use available financial resources to support such instruction. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

§ 115C-160. Definitions.

The State Board of Education is authorized and directed to provide appropriate definitions necessary to this part of vocational education instruction not otherwise included in this Part. As used in this Part, unless the context requires otherwise:

- (1) The term "building trades training" means the development of vocational skills through the construction of dwellings or other buildings and related activities by students in vocational education programs.
- (2) The term "production work" means production activities and services performed by vocational education classes under contract with a second party for remuneration. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

§ 115C-161. Duties of the State Board of Education.

The State Board of Education is authorized and directed to establish, maintain, and implement such policies, rules, regulations, and procedures not in conflict with State law or other State Board policies as necessary to assist local boards of education in the conduct of production work experiences performed in connection with approved State Board of Education vocational education programs. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

§ 115C-162. Use of proceeds derived from production work.

Unless elsewhere authorized in these statutes, local boards of education are authorized and directed to deposit to the appropriate school account, no later than the end of the next business day after receipt of funds, all proceeds derived from the sale of products or services from production work experiences. Such proceeds shall be established as a revolving fund to be used solely in operating and improving vocational education programs. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

§ 115C-163. Acquisition of land for agricultural education instructional programs.

Local boards of education are authorized and empowered to acquire by gift, purchase, or lease for not less than the useful life of any project to be conducted upon the premises, a parcel of land suitable for a land laboratory to provide students with practical instruction in soil science, plant science, horticulture, forestry, animal husbandry, and other subjects related to the agriculture curriculum.

Each deed, lease, or other agreement for such land shall be made to the respective local board of education in which the school offering instruction in agriculture is located; and title to such land shall be examined and approved by the school attorney.

Any land laboratory thus acquired shall be assigned to the agricultural education program of the school, to be managed with the advice of an agricultural education advisory committee.

The products of the land laboratory not needed for public school purposes may be sold to the public: Provided, however, that all proceeds from the sale of products shall be deposited in the appropriate school account no later than the end of the next business day after receipt of funds. Such proceeds shall be established as a revolving fund to be used solely in operating and improving vocational education programs. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

§ 115C-164. Building trades training.

In the establishment and implementation of production work experience policies, the State Board of Education shall be guided as follows:

- (1) Local boards of education are authorized to use supplementary tax funds or other local funds available for the support of vocational education to purchase and develop suitable building sites on which dwellings or other buildings are to be constructed by vocational education trade classes of each public school operated by local boards of education. Local boards of education are authorized to use such funds for each school to pay the fees necessary in securing and recording deeds to these properties for each public school operated by local boards of education and to purchase all materials needed to complete the construction of buildings by vocational education trade classes and for development of site and property by other vocational education classes. Local boards of education are further authorized to expend such funds in acquiring skilled services, including electrical, plumbing, heating, sewer, water, transportation, grading, and landscaping needed in the construction and completion of buildings which cannot be supplied by the students in vocational education trade classes.
- (2) Local boards of education are authorized, in conjunction with or in lieu of subdivision (1) above, to contract with recognized building trades educational foundations or associations in the purchase of land for the construction and development of buildings: Provided however, that all contracts are in accordance with the requirements set forth by the State Board of Education. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

§ 115C-165. Advisory committee on construction projects.

The board of education of the local school administrative unit in which the proposed project of construction is to be undertaken shall appoint an advisory committee composed of no less than five persons residing within that administrative unit of which no less than three will be associated with the building

trades industry, and no building trades project shall be undertaken without the approval of a majority of the advisory committee. (1977, c. 490, s. 4; 1981, c. 423, s. 1.)

Part 3. Eye Safety Devices Required.

§ 115C-166. Eye protection devices required in certain courses.

The governing board or authority of any public or private school or educational institution within the State, wherein shops or laboratories are conducted providing instructional or experimental programs involving:

- (1) Hot solids, liquids or molten metals;
- (2) Milling, sawing, turning, shaping, cutting, or stamping of any solid materials;
- (3) Heat treatment, tempering, or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding;
- (5) Repair or servicing of any vehicle; or
- (6) Caustic or explosive chemicals or materials,

shall provide for and require that every student and teacher wear industrial quality eye protective devices at all times while participating in any such program. These industrial quality eye protective devices shall be furnished free of charge to the student and teacher. (1969, c. 1050, s. 1; 1981, c. 423, s. 1.)

§ 115C-167. Visitors to wear eye safety devices.

Visitors to such shops and laboratories shall be furnished with and required to wear such eye safety devices while such programs are in progress. (1977, c. 1050, s. 2; 1981, c. 423, s. 1.)

§ 115C-168. "Industrial-quality eye protective devices" defined.

"Industrial-quality eye protective devices", as used in G.S. 115C-166, means devices meeting the standards of the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z 87.1-1968 approved by the U.S.A. Standards Institute, Inc. (1969, c. 1050, s. 3; 1981, c. 423, s. 1.)

§ 115C-169. Corrective-protective devices.

In those cases where corrective-protective devices that require prescription ophthalmic lenses are necessary, such devices shall only be supplied by those persons licensed by the State to prescribe or supply corrective-protective devices. (1969, c. 1050, s. 4; 1981, c. 423, s. 1.)

§§ 115C-170 to 155C-174: Reserved for future codification purposes.

ARTICLE 11.

*High School Competency Testing.***§ 115C-175. Purpose.**

The State Board of Education shall adopt tests or other measurement devices which may be used to assure that graduates of the public high schools and graduates of nonpublic high schools supervised by the State Board of Education pursuant to the provisions of Part 1 of Article 39 of this Chapter possess those skills and that knowledge necessary to function independently and successfully in assuming the responsibilities of citizenship. This Article has three purposes: to assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function as a member of society, to provide a means of identifying strengths and weaknesses in the education process, and to establish additional means for making the education system accountable to the public for results. (1977, c. 522, s. 1; 1981, c. 423, s. 1.)

Legal Periodicals. — For a comment on North Carolina Tenured Teacher Fair Dismissing inadequate performance under the missal Act, see 3 Campbell L. Rev. 77 (1981).

§ 115C-176. Competency Test Commission.

(a) The Governor shall appoint a Competency Test Commission which shall be composed of 15 members who shall hold office for four years or until their successors are appointed. Any vacancy on the Competency Test Commission shall be filled by the Governor for the unexpired term. Five members of the Competency Test Commission shall be persons serving as teachers or principals in high schools; five shall be citizens of the State interested in education; two shall be professional educators from the faculties of institutions of higher education in the State; two shall be persons competent in the field of psychological measurement; and one shall be the superintendent of a local school administrative unit in the State. The members shall be entitled to compensation for each day spent on the work of the Competency Test Commission as approved by the State Board of Education and receive reimbursement for travel and subsistence expenses incurred in the performance of their duties at rates specified in G.S. 138-5 or 138-6, whichever is applicable to the individual member. All currently employed teachers serving on the Commission shall be entitled to receive full pay for each day spent on the work of the Commission without any reduction in salary for a substitute teacher's pay.

(b) The Superintendent of Public Instruction, or his designee, shall serve as an ex officio, nonvoting member of the Competency Test Commission. (1977, c. 522, s. 2; 1981, c. 423, s. 1.)

§ 115C-177. Duties of the Commission.

The Competency Test Commission shall annually advise the State Board of Education on matters pertaining to the use of high school graduation competency tests. (1977, c. 522, s. 3; 1981, c. 423, s. 1.)

§ 115C-178. Administration of the test.

The tests shall be administered annually to all eleventh grade students in the public school. Students who fail to attain the required minimum standard for graduation in the eleventh grade shall be given remedial instruction and additional opportunities to take the test up to and including the last month of

the twelfth grade. Students who fail to pass parts of the test shall be retested on only those parts they fail. Students in the eleventh grade who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs. (1977, c. 522, s. 3; 1981, c. 423, s. 1.)

§ 115C-179. Duties of Superintendent of Public Instruction.

The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for administering the Competency Testing Program provided for by this Article and for providing necessary staff services to the Competency Test Commission. (1977, c. 522, s. 4; 1981, c. 423, s. 1.)

§ 115C-180. Duties of State Board of Education.

The State Board of Education shall adopt tests, graduation standards, and policies and procedures for the implementation of this Article. (1977, c. 522, s. 5; 1981, c. 423, s. 1.)

§ 115C-181. Duties of local school boards.

Local boards of education shall cooperate with the State Board of Education in carrying out the policies and guidelines adopted by the State Board of Education for implementing this Article. (1977, c. 522, s. 6; 1981, c. 423, s. 1.)

§ 115C-182. Public records exception.

Any written material containing the identifiable scores of individual students on any test taken pursuant to the provisions of this Article shall not be considered a public record within the meaning of G.S. 132-1 and shall not be disseminated or otherwise made available to the public by any member of the State Board of Education, any employee of the State Board of Education, the Superintendent of Public Instruction, any employee of the Department of Public Instruction, any member of a local board of education, any employee of a local board of education, or any other person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g. (1977, c. 522, s. 7; 1981, c. 423, s. 1.)

§ 115C-183. Provisions for nonpublic schools.

The State Board of Education may require the implementation of the testing program contemplated by this Article in nonpublic schools supervised by it pursuant to the provisions of Part 1 of Article 39 of this Chapter. (1977, c. 522, s. 8; 1981, c. 423, s. 1.)

§ 115C-184. Remediation funds.

Funds appropriated for the purpose of remediation support for students who fail the high school competency test shall be distributed in accord with rules and regulations promulgated by the State Board of Education. The State Board of Education shall allocate remediation funds to institutions administered by the Department of Human Resources on the same basis as funds allocated to other local education agencies. (1981, c. 423, s. 1.)

§§ 115C-185 to 115C-188: Reserved for future codification purposes.

ARTICLE 12.

Statewide Testing Program.

§ 115C-189. Purpose.

In order to assess the effectiveness of the educational process, and to insure that each pupil receives the maximum educational benefit from the educational process, the State Board of Education shall implement an annual statewide testing program in basic subjects. It is the intent of this testing program to help local school systems and teachers identify and correct student needs in basic skills rather than to provide a tool for comparison of individual students or to evaluate teacher performance. The statewide testing program shall be conducted each school year for the first, second, third, sixth and ninth grades: Provided, that criterion reference tests shall be used in the first and second grades and norm reference tests shall be used in the testing program in grades three, six and nine. Students in these grade levels who are enrolled in special education programs or who have been officially designated as eligible for participation in such programs may be excluded from the testing programs. (1977, c. 541, s. 1; 1981, c. 423, s. 1.)

§ 115C-190. State Board of Education responsibilities.

The State Board of Education shall have the responsibility and authority to make those policies necessary for the implementation of the intent and purposes of this Article, not inconsistent with the provisions of this Article. (1977, c. 541, s. 2; 1981, c. 423, s. 1.)

§ 115C-191. Appointment of Testing Commission.

(a) The Governor shall appoint a Testing Commission composed of 11 members who shall hold office for two years or until their successors are nominated and appointed. Any vacancy on the Testing Commission shall be filled by the Governor by appointment for the unexpired term. Six of the members of the Testing Commission shall be certified teachers currently employed for the grades in which tests are to be administered; two shall be persons competent in the field of psychological measurement; one shall be a school principal; one shall be a supervisor of elementary instruction; and one shall be the superintendent of a local school administrative unit. The members of the Testing Commission shall be entitled to compensation for each day spent on the work of the Testing Commission, as approved by the State Board of Education, and receive reimbursement for travel and subsistence expense incurred in the performance of their duties at the rates specified in G.S. 138-5 or 138-6, whichever is applicable to the individual member. All currently employed teachers serving on the Commission shall be entitled to receive their full pay for each school day spent on the work of the Commission without any reduction in salary for a substitute teacher's pay.

(b) The Superintendent of Public Instruction, or his designee, shall serve as an ex officio, nonvoting member of the Testing Commission. (1977, c. 541, s. 3; 1981, c. 423, s. 1.)

§ 115C-192. Evaluation and selection of tests.

(a) The members of the Testing Commission shall secure copies of tests designed to measure the level of academic achievement. Each of these tests shall be examined carefully and the Testing Commission shall file with the State Board of Education a written evaluation of each of these tests along with appropriate recommendations. In evaluating a test, the Testing Commission shall give special consideration to the suitability of a test to the instructional level or special education program or level for which it is intended to be used and the validity of the test.

(b) The Testing Commission shall annually review the suitability and validity of the tests in use by the State Board of Education for the purposes of this Article and investigate the suitability and validity of other tests. A written evaluation of all tests and any recommendations considered by the Testing Commission shall be filed with the State Board of Education. (1977, c. 541, s. 4; 1981, c. 423, s. 1.)

§ 115C-193. Duties of State Board of Education.

The State Board of Education shall review the recommendations of the Testing Commission and select the tests that it believes will provide the best measures of the levels of academic achievement attained by students in various subject areas. The State Board of Education shall also establish policies and guidelines necessary for carrying out the provisions of the Article. (1977, c. 541, s. 5; 1981, c. 423, s. 1.)

§ 115C-194. Duties of Superintendent of Public Instruction.

The Superintendent of Public Instruction shall be responsible, under policies adopted by the State Board of Education, for the statewide administration of the testing program provided by this Article and for providing necessary staff services to the Testing Commission. (1977, c. 541, s. 6; 1981, c. 423, s. 1.)

§ 115C-195. Duties of local boards of education.

Local boards of education shall cooperate with the State Board of Education in implementing the provisions of this Article, including the regulations and policies established by the State Board of Education. Local school administrative units are encouraged to continue to develop local testing programs designed to diagnose student needs further. (1977, c. 541, s. 7; 1981, c. 423, s. 1.)

§ 115C-196. Public records exception.

Any written material containing the identifiable scores of individual students on any test taken pursuant to the provisions of this Article shall not be considered a public record within the meaning of G.S. 132-1 and shall not be disseminated or otherwise made available to the public by any member of the State Board of Education, any employee of the State Board of Education, the Superintendent of Public Instruction, any employee of the Department of Public Instruction, any member of a local board of education, any employee of a local board of education, or any other person, except as permitted under the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g. (1977, c. 541, s. 8; 1981, c. 423, s. 1.)

§ 115C-197. Provisions for nonpublic schools.

The State Board of Education may require the implementation of the testing program contemplated by this Article in nonpublic schools supervised by it pursuant to the provisions of Part 1 of Article 39 of this Chapter. (1977, c. 541, s. 9; 1981, c. 423, s. 1.)

§§ 115C-198 to 115C-202: Reserved for future codification purposes.

ARTICLE 13.***Community Schools Act.*****§ 115C-203. Title of Article.**

This Article shall be known and may be cited as the "Community Schools Act." (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-204. Purpose of Article.

The purpose of this Article is to encourage greater community involvement in the public schools and greater community use of public school facilities. To this end it is declared to be the policy of this State:

- (1) To provide for increased involvement by citizens in their local schools through community schools advisory councils.
- (2) To assure maximum use of public school facilities by the citizens of each community in this State.

It is further declared to be the policy of this State that, to the extent sufficient funds are made available, each local board of education shall comply with the provisions of this Article. (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-205. Definitions.

As used in this Article:

- (1) The term "community schools advisory council" means a committee of citizens organized to advise community school coordinators, administrators, and local boards of education in the involvement of citizens in the educational process and in the use of public school facilities.
- (2) The term "community schools coordinator" means an employee of a local board of education whose responsibility it is to promote and direct maximum use of the public schools and public school facilities as centers for community development.
- (3) The term "interagency council" means a committee of agency and organizational representatives appointed by the Governor to work with the Superintendent of Public Instruction concerning the involvement of statewide agencies and organizations with the public schools.
- (4) The term "public school facility" means any education facility under the jurisdiction of a local board of education, whether termed an elementary school, middle school, junior high school, high school or union school. (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-206. State Board of Education; duties; responsibilities.

The Superintendent of Public Instruction shall prepare and present to the State Board of Education recommendations for general guidelines for encouraging increased community involvement in the public schools and use of public school facilities. The Superintendent of Public Instruction shall consult with the interagency council in preparing the general guidelines. These recommendations shall include, but shall not be limited to provisions for:

- (1) The use of public school facilities by governmental, charitable or civic organizations for activities within the community.
- (2) The utilization of the talents and abilities of volunteers within the community for the enhancement of public school programs including tutoring, counseling and cultural programs and projects.
- (3) Increased communications between the staff and faculty of the public schools, other community institutions and agencies, and citizens in the community.

Based on the recommendations of the Superintendent of Public Instruction, the State Board of Education shall adopt appropriate policies and guidelines for encouraging increased community involvement in the public schools and use of the public school facilities.

The State Board of Education shall establish rules and regulations governing the submission and approval of programs prepared by local boards of education for encouraging increased community involvement in the public schools and use of the public school facilities.

The State Board of Education is authorized to allocate funds to the local boards of education for the employment of community schools coordinators and for other appropriate expenses upon approval of a program submitted by a local board of education and subject to the availability of funds. In the event that a local board of education already has sufficient personnel employed performing functions similar to those of a community schools coordinator, the State Board of Education may allocate funds to that local board of education for other purposes consistent with this Article. Funds allocated to a local board of education shall not exceed three fourths of the total budget approved in the community schools program submitted by a local board of education. (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-207. Authority and responsibility of local boards of education.

Every local board of education which elects to apply for funding pursuant to this Article shall:

- (1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by the State Board of Education.
- (2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by the State Board of Education.
- (3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education shall provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall estab-

lish the terms and conditions of employment for the community schools coordinators.

Every local board of education which elects to apply for funding pursuant to this Article shall have the authority to enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of funds allocated by the State Board of Education. Local funds from each local board of education applying for funds for the community schools program must equal at least one fourth of the total budget for the community schools program of said local board of education. (1977, c. 682; 1981, c. 423, s. 1.)

§ 115C-208. Community schools advisory councils; duties; responsibilities; membership.

Every participating local board of education shall establish one of more community schools advisory councils which may become involved in matters affecting the educational process in accordance with rules established by the local board of education and approved by the State Board of Education and further shall consider ways of increasing community involvement in the public schools and utilization of public school facilities. Community schools advisory councils may assist local boards of education in the development and preparation of the plans and programs to achieve such goals, may assist in the implementation of such plans and programs and may provide such other assistance as may be requested by the local boards of education.

Community schools advisory councils shall work with local school officials and personnel, parent-teacher organizations, and community groups and agencies in providing maximum opportunities for public schools to serve the communities, and shall encourage the maximum use of volunteers in the public schools.

At least one half of the members of each community schools advisory council shall be the parents of students in the particular public school system: Provided, that less than twenty-five percent (25%) of the pupils attending a particular school reside outside the immediate community of the school, at least one half of the members shall be parents of students in the particular school for which the advisory council is established. Wherever possible the local board of education is encouraged to include at least one high school student. The size of the councils and the terms of membership on the councils shall be determined by the local board of education in accordance with the State guidelines. (1977, c. 682; 1979, c. 828; 1981, c. 423, s. 1.)

§ 115C-209. Community schools coordinators.

Every participating local board of education shall employ one or more community schools coordinators and shall establish the terms and conditions of their employment. Community schools coordinators shall be responsible for:

- (1) Providing support to the community schools advisory councils and public school officials.
- (2) Fostering cooperation between the local board of education and appropriate community agencies.
- (3) Encouraging maximum use of community volunteers in the public schools.
- (4) Performing such other duties as may be assigned by the local superintendent and the local board of education, consistent with the purposes of this Article. (1977, c. 682; 1981, c. 423, s. 1.)

§§ 115C-210 to 115C-214: Reserved for future codification purposes.

ARTICLE 14.

Driver Education.

§ 115C-215. Instruction in driver training and safety education.

There shall be organized and administered under the general supervision of the Superintendent of Public Instruction a program of driver training and safety education in the public schools of this State, said courses to be noncredit courses taught by instructors approved by the Department of Public Instruction. (1953, c. 1196; 1955, c. 1372, art. 23, s. 4; 1959, c. 573, s. 16; 1981, c. 423, s. 1.)

§ 115C-216. Boards of education required to provide courses in operation of motor vehicles.

(a) Course of Training and Instruction Required in Public High Schools. — The State Board of Education and local boards of education are hereby required to provide as a part of the program of the public high schools in this State a course of training and instruction in the operation of motor vehicles and to make such courses available for all persons of provisional license age, including public school students, nonpublic school students and out-of-school youths under 18 years of age whose physical and mental qualifications meet license requirements, in conformance with course requirements and funds made available under the provisions of G.S. 20-88.1 or as hereinafter provided or both.

(b) Inclusion of Expense in Budget. — The local boards of education of every local school administrative unit are hereby authorized to include as an item of instructional service and as a part of the current expense fund of the budget of the several high schools under their supervision, the expense necessary to install and maintain such a course of training and instructing eligible persons in such schools in the operation of motor vehicles.

(c) Appropriations. — The boards of county commissioners in the several counties of the State and the governing bodies of all municipalities having power to appropriate and raise money by taxation and otherwise are hereby authorized to appropriate funds necessary to pay the expenses necessary to install and maintain in any public high school under their supervision a course of training and instruction for eligible students in such schools in the operation of motor vehicles, whether or not the county board of education or administrative unit shall have included the cost of the same in its budget request when submitted for approval.

(d) How Moneys Appropriated May Be Provided. — The board of county commissioners and the governing bodies of all municipalities having power to appropriate money and to levy taxes and raise money are hereby authorized to allocate and expend the moneys appropriated pursuant to this section or other acts of the General Assembly and the moneys provided by taxation, by sale or rental of any real or personal property owned by such county or other taxing unit, or by use of any surplus funds on hand or acquired from any source, for the purpose of funding any such course of instruction and training in any public high school. The special approval of the General Assembly is hereby given for the levying of taxes for such purpose and for providing funds for such purpose by the other means herein mentioned.

(e) Content of Course; What Persons Eligible. — The words "a course of training and instruction for eligible persons in the operation of motor vehicles" as applied to this section means such course of instruction in the operation of motor vehicles prescribed or approved by the Department of Public Instruction, provided that every such course shall include actual operation of motor vehicles by the persons eligible for same, under the supervision of a qualified instructor. Only such persons older than 14 years and six months, who are approved by the principal of the school, shall be eligible for such course of instruction, subject to rules and regulations prescribed by the Department of Public Instruction.

(f) Acts Ratified and Confirmed. — The acts of all boards of county commissioners and the governing bodies of all municipalities, the acts of all local boards of education, and the acts of the State Board of Education heretofore done in connection with providing courses of training and instruction in the operation of motor vehicles in this State, including the appropriation and expenditure of funds for such purpose, are hereby ratified and confirmed. (1955, c. 817; 1965, c. 397; 1981, c. 423, s. 1.)

§§ 115C-217 to 115C-221: Reserved for future codification purposes.

ARTICLE 15.

North Carolina School of Science and Mathematics.

§ 115C-222. Establishment of North Carolina School of Science and Mathematics.

The North Carolina School of Science and Mathematics is established to be governed by a board of trustees described in this Article. (1977, 2nd Sess., c. 1219, s. 42; 1981, c. 423, s. 1.)

§ 115C-223. Board of Trustees; appointment; terms of office.

(a) The Board of Trustees of the North Carolina School of Science and Mathematics consists of the following members:

- (1) Five ex officio nonvoting members: the Chairman of the State Board of Education; the Superintendent of Public Instruction; the President of the Community College System; the President of the Association of Independent Colleges and Universities; and one member of the Board of Governors of The University of North Carolina designated by the Chairman of that Board.
- (2) Two members appointed by the Superintendent of Public Instruction: a science teacher; and a mathematics teacher; both of whom are from within the State.
- (3) Two members appointed by the Lieutenant Governor: a member of the Senate; and a superintendent of a local school administrative unit.
- (4) Two members appointed by the Speaker of the House of Representatives: a member of the House; and a principal of a local school administrative unit.
- (5) Fifteen members appointed by the Governor, at least 12 of whom shall be scientists and mathematicians. One of these scientists or mathematicians shall be designated by the Governor as Chairman of the Board of Trustees.

(b) The terms of the appointments of the Lieutenant Governor and of the Speaker of the House shall coincide with the terms of the particular appointing officer. The two initial appointments of the Superintendent of Public Instruction shall be for terms of four years. Five of the initial appointments of the Governor shall be for terms of two years; five shall be for terms of four years; and five shall be for terms of six years. With the exception of the appointments of the Lieutenant Governor and Speaker of the House, at the expiration of the terms of the initial appointees, their successors shall be appointed for terms of six years, beginning July 1 in the year of the respective appointments.

(c) Vacancies in appointive terms shall be filled for the unexpired portion of the terms by appointment of the officer who appointed the person causing each vacancy. (1977, 2nd Sess., c. 1219, s. 42; 1981, c. 423, s. 1.)

§ 115C-224. Budget; preparation; submission.

The Board of Trustees, assisted by administrative staff, shall prepare budgets for the School and shall submit these budgets directly to the Governor. (1977, 2nd Sess., c. 1219, s. 42; 1981, c. 423, s. 1.)

§§ 115C-225 to 115C-229: Reserved for future codification purposes.

ARTICLE 16.

Optional Programs.

Part 1. Educational Research.

§ 115C-230. Special projects.

Local boards of education are authorized to sponsor or conduct educational research and special projects pursuant to the provisions of G.S. 115C-47(8). (1981, c. 423, s. 1.)

Part 2. Adult Education.

§ 115C-231. Adult education programs; tuition; limitation of enrollment of pupils over 21.

(a) When in the judgment of the State Board of Education a program of adult education should be established as a part of the public school system and when appropriations have been made therefor, there shall be organized and administered under the general supervision of the Superintendent of Public Instruction, a course in adult education: Provided, that local boards of education, in their discretion, may institute and support such programs from local funds upon the approval of the State Board of Education.

(b) Tuition shall be free of charge to every person of the State 18 years of age, or over, who has not completed a standard high school course of study.

(c) Unless otherwise assigned by the local board of education, all persons of the district or attendance area who have not completed the prescribed course for graduation in the high school are entitled to attend the schools in the district or attendance area in which they reside: Provided, the superintendent, or the principal with the approval of the superintendent, of the local school administrative unit may, in his discretion, prohibit the enrollment of or remove from school any pupil who has attained the age of 21 years. (1955, c.

1372, art. 1, s. 1; art. 19, s. 3; art. 23, s. 2; 1963, c. 448, s. 24; 1971, c. 153; c. 704, s. 1; c. 1231, s. 1; 1981, c. 423, s. 1.)

Part 3. Summer Schools.

§ 115C-232. Local financing of summer schools.

Supplementary funds authorized in special tax elections for school purposes may be used to establish and maintain summer schools, as provided in G.S. 115C-501(a). (1981, c. 423, s. 1.)

§ 115C-233. Operation of summer schools.

Each local school administrative unit may establish and maintain summer schools. Such summer schools as may be established shall be administered by local boards of education and shall be conducted in accordance with standards developed by the State Board of Education. The standards so developed shall specify the requirements for approved curriculum, the qualifications of the personnel, the length of the session, and the conditions under which students may be granted credit for courses pursued during a summer school. In determining the eligibility of students for admission to summer schools, boards of education shall be governed by the provisions of G.S. 115C-116, 115C-366(b) and 115C-367 to 115C-370. Boards of education of local school administrative units may provide for summer schools from funds made available for that purpose by the State Board of Education, funds appropriated to the local school administrative unit by the tax-levying authority, and from any other revenues available for the purpose. (1975, c. 437, s. 11; 1981, c. 423, s. 1.)

§§ 115C-234 to 115C-238: Reserved for future codification purposes.

ARTICLE 17.

Supporting Services.

Part 1. Transportation.

§ 115C-239. Authority of local boards of education.

Each local board of education is hereby authorized, but is not required, to acquire, own and operate school buses for the transportation of pupils enrolled in the public schools of such local school administrative unit and of persons employed in the operation of such schools within the limitations set forth in G.S. 115C-239 to 115C-246, 115C-248 to 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261. Boards of education which own and operate school buses for the transportation of pupils shall have authority to establish separate systems of transportation for pupils attending elementary schools and for pupils attending junior or senior high schools. Each such board may operate such buses to and from such of the schools within the local school administrative unit, and in such number, as the board shall from time to time find practicable and appropriate for the safe, orderly and efficient transportation of such pupils and employees to such schools. (1955, c. 1372, art. 21, s. 1; 1973, c. 586, s. 1; 1981, c. 423, s. 1.)

Editor's Note. — Sections 115C-260 and 115C-261, included in the references in this section, were repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-240. Authority and duties of State Board of Education.

(a) The State Board of Education shall have no authority over or control of the transportation of pupils and employees upon any school bus owned and operated by any local board of education, except as provided in G.S. 115C-239 to 115C-246, 115C-248 to 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261.

(b) The State Board of Education shall be under no duty to supply transportation to any pupil or employee enrolled or employed in any school. Neither the State nor the State Board of Education shall in any manner be liable for the failure or refusal of any local board of education to furnish transportation, by school bus or otherwise, to any pupil or employee of any school, or for any neglect or action of any county or city board of education, or any employee of any such board, in the operation or maintenance of any school bus.

(c) The State Board of Education shall from time to time adopt such rules and regulations with reference to the construction, equipment, color, and maintenance of school buses, the number of pupils who may be permitted to ride at the same time upon any bus, and the age and qualifications of drivers of school buses as it shall deem to be desirable for the purpose of promoting safety in the operation of school buses. No school bus shall be operated for the transportation of pupils unless such bus is constructed and maintained as prescribed in such regulations and is equipped with adequate heating facilities, a standard signaling device for giving due notice that the bus is about to make a turn, an alternating flashing spotlight on the front of the bus, an alternating flashing spotlight on the rear of the bus, and such other warning devices, fire protective equipment and first aid supplies as may be prescribed for installation upon such buses by the regulation of the State Board of Education.

(d) The State Board of Education shall, when requested so to do by any local board of education, but not otherwise, advise such local board with reference to the establishment and amendment of school bus routes, the acquisition and maintenance of school buses, or any other question which may arise in connection with the organization and operation of the school bus transportation system of such local board.

(e) The State Board of Education shall allocate to the respective local boards of education all funds appropriated from time to time by the General Assembly for the purpose of providing transportation to the pupils enrolled in the public schools within this State. All such funds shall be allocated by the State Board of Education in accordance with the number of pupils to be transported, the length of bus routes, road conditions and all other circumstances affecting the cost of the transportation of pupils by school bus to the end that the funds so appropriated may be allocated on a fair and equitable basis, according to the needs of the respective local school administrative units and so as to provide the most efficient use of such funds. Such allocation shall be made by the State Board of Education at the beginning of each fiscal year, except that the State Board may reserve for future allocation from time to time within such fiscal year as the need therefor shall be found to exist, a reasonable amount not to exceed ten percent (10%) of the total funds available for transportation in such fiscal year from such appropriation.

(f) Upon such allocation by the State Board of Education, all funds so appropriated by the General Assembly shall be paid over to the respective local boards of education in accordance with such allocation in equal monthly installments throughout the regular school year: Provided, however, that upon

the request of a local board of education, the State Board of Education may, in its discretion, pay over to the local board all or any part of any or all monthly installments prior to the time when the same would otherwise be payable. The respective local boards shall use such funds for the purposes of replacing, maintaining, insuring, and operating public school buses and service vehicles in accordance with the provisions of G.S. 115C-239 to 115C-246, 115C-248 to 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261, and for no other purpose, but in the making of expenditures for such purposes shall be subject to no control by the State Board of Education. (1955, c. 1372, art. 21, p. 2; 1981, c. 423, s. 1.)

Cross References. — As to exemption of vehicles other than buses from construction requirements, see § 115C-253.

Editor's Note. — Sections 115C-260 and

115C-261, included in the references in subsections (a) and (f) of this section, have been repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-241. Assignment of school buses to schools.

The superintendent of the schools of each local school administrative unit which shall elect to operate a school bus transportation system, shall, prior to the commencement of each regular school year and subject to the approval of the local board of education, allocate and assign to the respective public schools within the jurisdiction of such local school administrative unit the school buses which the local board shall own and direct to be operated during such school year. From time to time during such school year, subject to the directions of the local board of education, the superintendent may revise such allocation and assignment of school buses in accordance with the changing transportation needs and conditions at the respective schools of such local school administrative unit, and may, pursuant to such revision, assign an additional bus or buses to a school or withdraw a bus or buses from a school in such local school administrative unit. (1955, c. 1372, art. 21, s. 3; 1981, c. 423, s. 1.)

§ 115C-242. Use and operation of school buses.

Public school buses may be used for the following purposes only, and it shall be the duty of the superintendent of the school of each local school administrative unit to supervise the use of all school buses operated by such local school administrative unit so as to assure and require compliance with this section:

- (1) A school bus may be used for the transportation of pupils enrolled in and employees in the operation of the school to which such bus is assigned by the superintendent of the local school administrative unit. Except as otherwise herein provided, such transportation shall be limited to transportation to and from such school for the regularly organized school day, and from and to the points designated by the principal of the school to which such bus is assigned, for the receiving and discharging of passengers. No pupil or employee shall be so transported upon any bus other than the bus to which such pupil or employee has been assigned pursuant to the provisions of G.S. 115C-239 to 115C-246, 115C-248 to 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261: Provided, that children enrolled in a Headstart program which is housed in a building owned and operated by a local school administrative unit where school is being conducted may be transported on public school buses, so long as the contractual arrangements made cause no extra expense to the State: Provided further, that children with special needs may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education

if the children to be transported are or have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.

- (2) In the case of illness or injury requiring immediate medical attention of any pupil or employee while such pupil or employee is present at the school in which such pupil is enrolled or such employee is employed, the principal of such school may, in his discretion, permit such pupil or employee to be transported by a school bus to a doctor or hospital for medical treatment, and may, in his discretion, permit such other person as he may select to accompany such pupil.
- (3) The board of education of any local school administrative unit may operate the school buses of such unit one day prior to the opening of the regular school term for the transportation of pupils and employees to and from the school to which such pupils are assigned or in which they are enrolled and such employees are employed, for the purposes of the registration of students, the organization of classes, the distribution of textbooks, and such other purposes as will, in the opinion of the superintendent of the schools of such unit, promote the efficient organization and operation of such public schools.
- (4) A local board of education which elects to operate a school bus transportation system, shall not be required to provide transportation for any school employee, nor shall such board be required to provide transportation for any pupil living within one and one half miles of the school in which such pupil is enrolled.
- (5) Local boards of education, under such rules and regulations as they shall adopt, may permit the use and operation of school buses for the transportation of pupils and instructional personnel as the board deems necessary to serve the instructional programs of the schools. Included in the use permitted by this section is the transportation of children with special needs, such as mentally retarded children and children with physical defects, and children enrolled in programs that require transportation from the school grounds during the school day, such as special vocational or occupational programs. On any such trip, a city or county-owned school bus shall not be taken out of the State.

If State funds are inadequate to pay for the transportation approved by the local board of education, local funds may be used for these purposes. Local boards of education shall determine that funds are available to such boards for the transportation of children to and from the school to which they are assigned for the entire school year before authorizing the use and operation of school buses for other services deemed necessary to serve the instructional program of the schools.

Children with special needs may be transported to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported have been placed in that program by a local school administrative unit as a result of the State or the unit's duty to provide such children with a free appropriate public education.

- (6) School buses owned by a local board of education may be used for civil preparedness purposes in any state of disaster or local state of emergency declared under Chapter 166A of the General Statutes. Under rules and regulations adopted by a local board of education, its school buses may be used with its permission for the purpose of testing civil preparedness plans; however, neither the State Board of Education nor the local board of education shall be liable for the operating cost, any compensation claims or any tort claims resulting from the test.

- (7) Uses authorized by G.S. 115C-243. (1955, c. 1372, art. 21, s. 4; 1957, c. 1103; 1969, c. 47; 1973, c. 869; 1977, c. 830, ss. 2, 3; 1977, 2nd Sess., c. 1280, s. 2; 1979, c. 885; 1981, c. 423, s. 1.)

Editor's Note. — Sections 115C-260 and 115C-261, included in the reference in subdivision (1) of this section, were repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-243. Use of school buses by senior citizen groups.

(a) Any local board of education may enter into agreements with the governing body of any county, city, or town, or with any State agency, or any agency established or identified pursuant to Public Law 89-73, Older Americans Act of 1965, to provide for the use of school buses to provide transportation for the elderly.

(b) Each agreement entered into under this section must provide the following:

- (1) That the board of education shall be reimbursed in full for the proportionate share of any and all costs, both fixed and variable, of such buses attributable to the uses of the bus pursuant to the agreement.
- (2) That the board of education shall be held harmless from any and all liability by virtue of uses of the buses pursuant to the agreement.
- (3) That adequate liability insurance is maintained under G.S. 115C-42 to insure the board of education, and that adequate insurance is maintained to protect the property of the board of education. The minimum limit of liability insurance shall not be less than the maximum amount of damages which may be awarded under the Tort Claims Act, G.S. 143-291. The costs of said insurance shall be paid by the agency contracting for the use of the bus, either directly or through the fee established by the agreement.

(c) Before any board of education shall enter into any agreement under this section, it must by resolution establish a policy for use of school buses by the elderly. The policy must give first priority to school uses under G.S. 115C-242 and 115C-42. The resolution must provide for a schedule of charges under this section. Such resolution, if adopted, shall be amended or readopted at least once per year to provide for adjustments to the schedule of charges or to provide for maintaining the same schedule of charges. If the price bid for the service by a private bus carrier is less than the schedule of charges adopted by the board of education, then the board of education may not enter into the agreement.

(d) No board of education shall be under any duty to sign any agreement under this section.

(e) No bus operated under the provisions of this section shall travel outside of the area consisting of the county or counties where the local board of education is located and the county or counties contiguous to that county or counties, but not outside of the State of North Carolina.

(f) Before any agreement under this section may be signed, the State Board of Education shall adopt a uniform schedule of charges for the use of buses under this section. Such schedule must be approved by the Advisory Budget Commission before becoming effective. Such schedule shall include a charge by the hour and by the mile which shall cover all costs both fixed and variable, including depreciation, gasoline, fuel, labor, maintenance, and insurance. The schedule may be amended by the State Board of Education with the concurrence of the Advisory Budget Commission. The schedule of charges adopted by the local board of education under subsection (c) may vary from the State schedule only to cover changes in wages. (1977, 2nd Sess., c. 1280, s. 1; 1981, c. 423, s. 1.)

Cross References. — As to use of activity buses, see § 115C-247.

§ 115C-244. Assignment of pupils to school buses.

(a) The principal of a school, to which any school bus has been assigned by the superintendent of the schools of the local school administrative unit embracing such school, shall assign to such bus or buses the pupils and employees who may be transported to and from such school upon such bus or buses. No pupil or employee shall be permitted to ride upon any school bus to which such pupil or employee has not been so assigned by the principal, except by the express direction of the principal.

(b) In the event that the superintendent of any local school administrative unit shall assign a school bus to be used in the transportation of pupils to two or more schools, the superintendent shall designate the number of pupils to be transported to and from each such school by such bus, and the principals of the respective schools shall assign pupils to such buses in accordance with such designation.

(c) Any pupil enrolled in any school, or the parent or guardian of any such pupil, or the person standing in loco parentis to such pupil, may apply to the principal of such school for transportation of such pupil to and from such school by school bus for the regularly organized school day. The principal thereupon shall assign such pupil to a school bus serving the bus route upon which such pupil lives, if any, and if such pupil is entitled to ride upon such bus in accordance with the provisions of G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261 and the regulations of the State Board of Education herein provided for. Such assignment shall be made by the principal so as to provide for the orderly, safe and efficient transportation of pupils to such school and so as to promote the orderly and efficient administration of the school and the health, safety and general welfare of the pupils to be so transported. Assignments of pupils and employees to school buses may be changed by the principal of the school as he may from time to time find proper for the safe and efficient transportation of such pupils and employees.

(d) The parent or guardian of any pupil enrolled in any school, or the person standing in loco parentis to any such pupil, who shall apply to the principal of such school for the transportation of such pupil to and from such school by school bus, may, if such application is denied, or if such pupil is assigned to a school bus not satisfactory to such parent, guardian, or person standing in loco parentis to such pupil, pursuant to rules and regulations established by the local board of education, apply to such board for such transportation upon a school bus designated in such application, and shall be entitled to a prompt and fair hearing by such board in accordance with the rules and regulations established by it. The majority of such board shall be a quorum for the purpose of holding such hearing and passing upon such application, and the decision of the majority of the members present at such hearing shall be the decision of the board. If, at such hearing, the board shall find that pupil is entitled to be transported to and from such school upon the school bus designated in such application, or if the board shall find that the transportation of such pupil upon such bus to and from such school will be for the best interests of such pupil, will not interfere with the proper administration of such school, or with the safe and efficient transportation by school bus of other pupils enrolled in such school and will not endanger the health or safety of the children there enrolled, the board shall direct that such child be assigned to and transported to such school upon such bus.

(e) A final decision of the local board of education pursuant to G.S. 115C-244(d) shall be subject to judicial review in the manner provided by

Article 4, Chapter 150A of the General Statutes: Provided, notwithstanding the provisions of G.S. 150A-45, a person seeking judicial review under this section shall not appeal the final decision of the local board of education to any State board, but shall file a petition for review in the superior court of the county where the final decision of the local board of education was made. If the court determines that the final decision of the local board of education should be set aside, then the court, notwithstanding the provisions of G.S. 150A-51, may enter an order so providing and adjudging that such child is entitled to the school bus assignment as claimed by the appellant, or such other school bus assignment as the court may find such child is entitled to, and in such case such child shall be assigned to such school bus by the local board of education concerned.

(f) No employee shall be assigned to or permitted to ride upon a school bus when to do so will result in the overcrowding of such bus or will prevent the assignment to such bus of a pupil entitled to ride thereon, or will otherwise, in the opinion of the principal, be detrimental to the comfort or safety of the pupils assigned to such bus, or to the safe, efficient and proper operation of such bus. (1955, c. 1372, art. 21, s. 5; 1981, c. 423, s. 1.)

Cross References. — As to assignment of students to school buses, see § 115C-372.

115C-261, included in the references in subsection (c) of this section, were repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

Editor's Note. — Sections 115C-260 and

§ 115C-245. School bus drivers; monitors; safety assistants.

(a) Each local board, which elects to operate a school bus transportation system, shall employ the necessary drivers for such school buses. The drivers shall have all qualifications prescribed by the regulations of the State Board of Education herein provided for and must have at least six months driving experience as a licensed operator of a motor vehicle before employment as a regular or substitute driver, but the selection and employment of each driver shall be made by the local board of education, and the driver shall be the employee of such local school administrative unit. Each local board of education shall assign the bus drivers employed by it to the respective schools within the jurisdiction of such board, and the principal of each such school shall assign the drivers to the school buses to be driven by them. No school bus shall at any time be driven or operated by any person other than the bus driver assigned by such principal to such bus except by the express direction of such principal or in accordance with rules and regulations of the appropriate local board of education.

(b) The driver of a school bus subject to the direction of the principal shall have complete authority over and responsibility for the operation of the bus and the maintaining of good order and conduct upon such bus, and shall report promptly to the principal any misconduct upon such bus or disregard or violation of the driver's instructions by any person riding upon such bus. The principal may take such action with reference to any such misconduct upon a school bus, or any violation of the instructions of the driver, as he might take if such misconduct or violation had occurred upon the grounds of the school.

(c) The driver of any school bus shall permit no person to ride upon such bus except pupils or school employees assigned thereto or persons permitted by the express direction of the principal to ride thereon.

(d) The principal of a school, to which a school bus has been assigned, may, in his discretion, appoint a monitor for any bus so assigned to such school. It shall be the duty of such monitor, subject to the direction of the driver of the bus, to preserve order upon the bus and do such other things as may be appropriate for the safety of the pupils and employees assigned to such bus while

boarding such bus, alighting therefrom or being transported thereon, and to require such pupils and employees to conform to the rules and regulations established by the local board of education for the safety of pupils and employees upon school buses. Such monitors shall be unpaid volunteers who shall serve at the pleasure of the principal.

(e) A local board of education may, in its discretion within funds available, employ transportation safety assistants upon recommendation of the principal through the superintendent. The safety assistants thus employed shall assist the bus drivers with the safety, movement, management, and care of children boarding the bus, leaving the bus, or being transported in it. The safety assistant should be either an adult or a certified student driver who is available as a substitute bus driver. (1955, c. 1372, art. 21, s. 6; 1979, c. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s. 1.)

Cross References. — As to funds for payment of transportation safety assistants, see § 115C-250.

§ 115C-246. School bus routes.

(a) The principal of the school to which a school bus has been assigned shall, prior to the commencement of each regular school year, prepare and submit to the superintendent of the local school administrative unit a plan for a definite route, including stops for receiving and discharging pupils, for each school bus assigned to such school so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent shall examine such plan and may, in his discretion, obtain the advice of the State Board of Education with reference thereto. The superintendent shall make such changes in the proposed bus routes as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the buses shall be operated upon the route so established and not otherwise, except as provided in G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the local school administrative unit.

(b) Unless road or other conditions shall make it inadvisable to do so, public school buses shall be so routed on state-maintained highways that the school bus, to which such pupil is assigned, shall pass within one mile of the residence of each pupil, who lives one and one half miles or more from the school to which such pupil is assigned.

(c) All bus routes when established pursuant to this section shall be filed in the office of the board of education of the local school administrative unit, and all changes made therein shall be filed in the office of such board within 10 days after such change shall become effective.

(d) If any school bus route established or changed as hereinabove provided is unsatisfactory to the district school committee, the committee may request the board of education of the local school administrative unit to make such change in such route as the committee desires. In the event, the board of education shall hear the request of the district school committee and shall make such change, if any, in such route as to the board shall seem advisable so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto.

(e) No provision of G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261 shall be construed to place upon the State, or upon any county or city, any duty to

supply any funds for the transportation of pupils, or any duty to supply funds for the transportation of pupils who live within the corporate limits of the city or town in which is located the public school in which such pupil is enrolled or to which such pupil is assigned, even though transportation to or from such school is furnished to pupils who live outside the limits of such city or town. (1955, c. 1372, art. 21, s. 7; 1959, c. 573, s. 15; 1963, c. 990, ss. 2, 3; 1965, c. 1095, ss. 2, 3; 1981, c. 423, s. 1.)

Editor's Note. — Sections 115C-260 and 115C-261, included in the references in subsections (a) and (e) of this section, were repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-247. Purchase of activity buses by local boards.

The several local boards of education in the State are hereby authorized and empowered to take title to school buses purchased with local or community funds for the purpose of transporting pupils to and from athletic events and for other local school activity purposes, and commonly referred to as activity buses. The provisions of G.S. 115C-42 shall be fully applicable to the ownership and operation of such activity school buses. Activity buses may also be used as provided in G.S. 115C-243. (1955, c. 1256; 1957, c. 685; 1959, c. 573, s. 2; 1961, c. 1102, s. 4; 1977, 2nd Sess., c. 1280, s. 3; 1981, c. 423, s. 1.)

§ 115C-248. Inspection of school buses and activity buses; report of defects by drivers; discontinuing use until defects remedied.

(a) The superintendent of each local school administrative unit, shall cause each school bus owned or operated by such local school administrative unit to be inspected at least once each 30 days during the school year for mechanical defects, or other defects which may affect the safe operation of such bus. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed promptly in the office of the superintendent of such local school administrative unit, and a copy thereof shall be forwarded to the principal of the school to which such bus is assigned.

(b) It shall be the duty of the driver of each school bus to report promptly to the principal of the school, to which such bus is assigned, any mechanical defect or other defect which may affect the safe operation of the bus when such defect comes to the attention of the driver, and the principal shall thereupon report such defect to the superintendent of the local school administrative unit. It shall be the duty of the superintendent of the local school administrative unit to cause any and all such defects to be corrected promptly.

(c) If any school bus is found by the principal of the school, to which it is assigned, or by the superintendent of the local school administrative unit, to be so defective that the bus may not be operated with reasonable safety, it shall be the duty of such principal or superintendent to cause the use of such bus to be discontinued until such defect is remedied, in which event the principal of the school, to which such bus is assigned, may permit the use of a different bus assigned to such school in the transportation of the pupils and employees assigned to the bus found to be defective.

(d) The superintendent of each local school administrative unit, shall cause each activity bus which is used for the transportation of students by such local school administrative unit or any public school system therein to be inspected for mechanical defects, or other defects which may affect the safe operation of such activity bus, at the same time and in the same way and manner as the regular public school buses for the normal transportation of public school

pupils are inspected. A report of such inspection, together with the recommendations of the person making the inspection, shall be filed with the principal of the school which uses and operates such activity bus and a copy shall be forwarded to the superintendent of the local school administrative unit involved. It shall be the duty of the driver of each activity bus to make the same reports to the principal of the school using and operating such activity bus as is required by this section. If any public school activity bus is found to be so defective that the activity bus may not be operated with reasonable safety, it shall be the duty of such principal to cause the use of such activity bus to be discontinued until such defect is remedied to the satisfaction of the person making the inspection and a report to this effect has been filed in the manner herein prescribed. Nothing in this subsection shall authorize the use of State funds for the purchase, operation or repair of any activity bus. (1955, c. 1372, art. 21, s. 8; 1961, c. 474; 1975, c. 150, s. 2; 1981, c. 423, s. 1.)

§ 115C-249. Purchase and maintenance of school buses, materials and supplies.

(a) To the extent that the funds shall be made available to it for such purpose, a local board of education is authorized to purchase from time to time such additional school buses and service vehicles or replacements for school buses and service vehicles, as may be deemed by such board to be necessary for the safe and efficient transportation of pupils enrolled in the schools within such local school administrative unit. Any school bus so purchased shall be constructed and equipped as prescribed by the provisions of G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261 and by the regulations of the State Board of Education issued pursuant thereto.

(b) The tax-levying authorities of any county are hereby authorized to make provision from time to time in the capital outlay budget of the county for the purchase of such school buses or service vehicles.

(c) Any funds appropriated from time to time by the General Assembly for the purchase of school buses or service vehicles shall be allocated by the State Board of Education to the respective local boards of education in accordance with the requirements of such boards as determined by the State Board of Education, and thereupon shall be paid over to the respective local boards of education in accordance with such allocation.

(d) The title to any additional or replacement school bus or service vehicle purchased pursuant to the provisions of this section, shall be taken in the name of the board of education of such local school administrative unit, and such bus shall in all respects be maintained and operated pursuant to the provisions of G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261 in the same manner as any other public school bus.

(e) It shall be the duty of the county board of education to provide adequate buildings and equipment for the storage and maintenance of all school buses and service vehicles owned or operated by the board of education of any local school administrative unit in such county. It shall be the duty of the tax-levying authorities of such county to provide in its capital outlay budget for the construction or acquisition of such buildings and equipment as may be required for this purpose.

(f) In the event of the damage or destruction of any school bus or service vehicle by fire, collision, or otherwise, the board of education of the local school administrative unit which shall own or operate such bus or service vehicle may apply to the State Board of Education for funds with which to replace it. If the State Board of Education finds that such bus or service vehicle has been

destroyed or damaged to the extent that it cannot be made suitable for further use, and if the State Board of Education finds that the replacement of such bus or service vehicle is necessary in order to enable such local school administrative unit to operate properly its school bus transportation system, the State Board of Education shall allot to the board of education of such local school administrative unit from the funds now held by the State Board of Education for the replacement of school buses or service vehicles, or from funds hereafter appropriated by the General Assembly for that purpose, a sum sufficient to purchase a new school bus or service vehicle to be used as a replacement for such damaged or destroyed bus or service vehicle and upon such allocation such sum shall be paid over to or for the account of the board of education of such local school administrative unit for such purpose.

(g) All school buses or service vehicles purchased by or for the account of any local board of education, except school buses or service vehicles purchased by such board from another local board of education of this State, shall be purchased through the Department of Administration.

(h) Appropriations made in the biennial Budget Appropriation Act for the purchase of public school buses shall be permanent appropriations, and unexpended portions of those appropriations shall not revert to the General Fund at the end of the biennium for which appropriated. Any unexpended portion of those appropriations shall at the end of each fiscal year be transferred to a reserve account and shall be held, together with any other funds appropriated for the purpose, for the purchase of public school buses. (1955, c. 1372, art. 21, s. 9; 1961, c. 833, s. 16; 1975, c. 879, s. 46; 1981, c. 423, s. 1.)

Editor's Note. — Sections 115C-260 and 115C-261, included in the references in subsec-

tions (a) and (d), were repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-250. Authority to expend funds for transportation of children with special needs.

(a) The State Board of Education is authorized to expend public funds or to otherwise provide motor vehicle transportation for children with special needs as those children are defined by G.S. 115C-109. Such transportation may be provided for nonresidential students to and from the nearest public educational institution or sheltered workshop located within the State when said students are full time equivalent students in the public schools. Such transportation also may be provided for nonresidential students to and from the nearest appropriate private school having a special education program approved by the State Board of Education if the children to be transported are, or have been placed in that program by the State or by a local school administrative unit as a result of the State's or the unit's duty to provide such children with a free appropriate public education.

(b) Funds appropriated for the transportation of children with special needs may be used to pay transportation safety assistants employed in accordance with the provisions of G.S. 115C-245 (e) for buses to which children with special needs are assigned. (1955, c. 1372, art. 21, s. 6; 1973, c. 1351, s. 1; 1975, c. 678, ss. 9, 10; 1977, c. 830, s. 1; 1979, ch. 719, ss. 1-4; 1979, 2nd Sess., c. 1156; 1981, c. 423, s. 1; c. 912, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 912, deleted former subsection (a) which authorized the State Board of Education to spend public funds to transport autistic and communications-handicapped children and

deaf and blind children to schools, relettered former subsection (b) as subsection (a), substituted "State's" for "State" near the end of subsection (a), deleted former subsection (c) which placed the operational and fiscal

responsibilities for such transportation with the Department of Human Resources, and relettered the former subsection (d) as subsection (b).

§ 115C-251. Transportation supervisors.

The State Board of Education shall from time to time adopt such rules and regulations with regard to the qualifications of persons employed by local boards of education as chief mechanic or supervisor of transportation as it shall deem necessary or desirable for the purpose of assuring the proper maintenance and safety of school buses. A local board of education shall not employ any person as chief mechanic or supervisor of transportation if that person does not meet the qualifications established by the State Board. (1977, c. 314; 1981, c. 423, s. 1.)

§ 115C-252. Aid in lieu of transportation.

(a) When, by reason of road conditions or otherwise, any local board of education, which shall elect to operate a school bus transportation system, shall find it impracticable to furnish to a pupil transportation by school bus to the school in which such pupil is enrolled, or to which such pupil is assigned, the board may assign such pupil to such other school within such local school administrative unit as the board shall deem advisable, unless the parent or guardian of such pupil or the person standing in loco parentis to such pupil, shall notify the principal of the school, in which such pupil is enrolled or to which such pupil is assigned, of the desire of such pupil to continue to attend such school without the benefit of transportation by school bus.

(b) In the event that any local board of education, which shall operate a system of school bus transportation, shall find it impracticable to furnish to a pupil such transportation to the school in which such pupil is enrolled or to which such pupil is assigned, and if, as a result thereof, such pupil shall be required to obtain board and lodging at a place other than the residence of such pupil in order to attend a school, such board may, in its discretion, provide for the payment to the parent or guardian of such pupil of a sum not to exceed fifty dollars (\$50.00) per month for each school month that such pupil shall so obtain board and lodging at a place other than the residence of the pupil for the purpose of attending a school. (1955, c. 1372, art. 21, s. 10; 1973, c. 932; 1981, c. 423, s. 1.)

§ 115C-253. Contracts for transportation.

Any local board of education may, in lieu of the operation by it of public school buses, enter into a contract with any person, firm or corporation for the transportation by such person, firm or corporation of pupils enrolled in the public schools of such local school administrative unit for the same purposes for which such local school administrative unit is authorized by G.S. 115C-239 to 115C-246, 115C-248, 115C-249, 115C-250(d), 115C-251 to 115C-254 and 115C-256 to 115C-261 to operate public school buses. Any vehicle used by such person, firm or corporation for the transportation of such pupils shall be constructed and equipped as provided in rules and regulations promulgated by the State Board of Education, and the driver of such vehicle shall possess all of the qualifications prescribed by rules and regulations promulgated by the State Board of Education: Provided, that where a contract for transportation of pupils is entered into between a local board of education and any person, firm or corporation which contemplates the use of an automobile or vehicle other than a bus for the transportation of 16 pupils or less, the automobile or vehicle shall not be required to be constructed and equipped as provided for in G.S. 115C-240(d) [115C-240(c)], but shall be constructed and equipped pursuant to

rules and regulations promulgated by the State Board of Education. In the event that any local board of education shall enter into such a contract, the board may use for such purposes any funds which it might use for the operation of school buses owned by the board, and the tax-levying authorities of the county or of the city may provide in the county or city budget such additional funds as may be necessary to carry out such contracts. (1955, c. 1372, art. 21, s. 11; 1975, c. 382; 1981, c. 423, s. 1.)

Editor's Note. — Sections 115C-260 and 115C-261, included in the references in this section, were repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-254. Use of school buses by State guard or national guard.

When requested to do so by the Governor, the board of education of any local school administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State guard or the national guard for the purpose of transporting members of the State guard or members of the national guard to and from authorized places of encampment, or to and from places to which members of the State guard or members of the national guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished by any local school administrative unit to the North Carolina State guard or the national guard shall be operated by members or employees of the State or national guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State guard or the national guard. (1955, c. 1372, art. 21, s. 12; 1981, c. 423, s. 1.)

§ 115C-255. Liability insurance and waiver of immunity as to certain acts of bus drivers.

The securing of liability insurance and the waiver of immunity as to certain torts of school bus drivers, school transportation service vehicle drivers and school activity bus drivers, is subject to the provisions of G.S. 115C-42, except when such vehicles are operated with funds from the State Public School Fund. (1981, c. 423, s. 1.)

§ 115C-256. School bus drivers under Workers' Compensation Act.

Awards to school bus drivers under the Workers' Compensation Act shall be made pursuant to the provisions of G.S. 115C-337(b). (1981, c. 423, s. 1.)

§ 115C-257. Attorney General to pay claims.

The Attorney General is hereby authorized to pay reasonable medical expenses, not to exceed six hundred dollars (\$600.00), incurred within one year from the date of accident to or for each pupil who sustains bodily injury or death caused by accident, while boarding, riding on, or alighting from a school bus operated by any local school administrative unit. (1955, c. 1372, art. 22, s. 1; 1981, c. 423, s. 1; c. 576, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 576, s. 1, effective July 1, 1981, with respect to all claims presented on or after that date, rewrote the section.

§ 115C-258. Provisions regarding payment.

The claims authorized herein may be paid, regardless of whether the injury received by the pupil was due to negligence on the part of the school bus driver, the injured pupil, or any other person. To the extent of payments made under this Article, the Attorney General shall be subrogated to the right of the pupil against any third party legally responsible for the injury. Further, any amounts paid shall constitute a credit against any obligation arising under the provisions of the Tort Claims Act. (1955, c. 1372, art. 22, s. 2; 1981, c. 423, s. 1; c. 576, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 576, s. 1, effective July 1, 1981, with respect to all claims presented on or after that date, substituted the present section for lan-

guage which provided that the approval of claims by the State Board of Education was final.

§ 115C-259. Claims must be filed within one year.

The right to payment as authorized herein shall be forever barred unless a claim be filed with the Attorney General within one year after the accident. (1955, c. 1372, art. 22, s. 3; 1981, c. 423, s. 1; c. 576, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 576, s. 1, effective July 1, 1981, with respect to all claims presented on or after that date, substituted the present section for one

which provided that the claims would be paid without regard to the negligence of the driver and that the amount paid out would be a lien upon the civil recoveries of the child.

§§ 115C-260, 115C-261: Repealed by Session Laws 1981, c. 576, s. 2, effective July 1, 1981.

§ 115C-262. Liability insurance and tort liability.

Liability insurance and tort liability of local boards of education for actions arising out of activities conducted pursuant to this Part, are subject to the provisions of G.S. 115C-42. (1981, c. 423, s. 1.)

Part 2. Food Service.**§ 115C-263. Required provision of services.**

As a part of the function of the public school system, local boards of education shall provide to the extent practicable school food services in the schools under their jurisdiction. All school food services made available under this authority shall be provided in accordance with standards and regulations recommended by the Superintendent of Public Instruction and approved by the State Board of Education. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1.)

§ 115C-264. Operation.

In the operation of their public school food programs, the public schools shall participate in the National School Lunch Program established by the federal government. The program shall be under the jurisdiction of the Division of School Food Services of the Department of Public Instruction and in accordance with federal guidelines as established by the Child Nutrition Division of the United States Department of Agriculture.

All school food services shall be operated on a nonprofit basis, and any earnings therefrom over and above the cost of operation as defined herein shall be used to reduce the cost of food, to serve better food, or to provide free or reduced-price lunches to indigent children and for no other purpose. The term "cost of operation" shall be defined as actual cost incurred in the purchase and preparation of food, the salaries of all personnel directly engaged in providing food services, and the cost of nonfood supplies as outlined under standards adopted by the State Board of Education. "Personnel" shall be defined as food service supervisors or directors, bookkeepers directly engaged in food service record keeping and those persons directly involved in preparing and serving food: Provided, that food service personnel shall be paid from the funds of food services only for services rendered in behalf of lunchroom services. Any cost incurred in the provisions and maintenance of school food services over and beyond the cost of operation shall be included in the budget request filed annually by local boards of education with boards of county commissioners. It shall not be mandatory that the provisions of G.S. 115C-522(a) and 143-129 be complied with in the purchase of supplies and food for such school food services. (1955, c. 1372, art. 5, s. 34; 1965, c. 912; 1967, c. 990; 1975, c. 384; 1981, c. 423, s. 1.)

Part 3. Library/Media Personnel.

§ 115C-265. Rules and regulations for distribution of library/media personnel funds; employment of personnel.

(a) The State Board of Education is authorized to promulgate rules and regulations for the distribution of library/media personnel funds, on the basis of average daily membership (ADM), to each local school administrative unit of the State.

(b) Each local school administrative unit in the State shall employ library/media personnel in accordance with State library/media guidelines approved by the State Board of Education insofar as funds are approved for that purpose by the North Carolina General Assembly. (1977, c. 1088, ss. 2, 3; 1981, c. 423, s. 1.)

§§ 115C-266 to 115C-270: Reserved for future codification purposes.

SUBCHAPTER V. PERSONNEL.

ARTICLE 18.

Superintendents.

§ 115C-271. Selection by local board of education, term of office.

At a meeting to be held biennially or quadrennially during the month of April, the various county boards of education shall meet and elect a county superintendent of schools subject to the approval of the Superintendent of Public Instruction and the State Board of Education. Such superintendent shall take office on the following July 1 and shall serve for a term of two or four years, or until his successor is elected and qualified. The superintendent shall be elected for a term of either two or four years, which term shall be in the

discretion of the county board of education. The county board of education may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract at any time during the final year of his term. Provided, however, in any year when new members are to be elected or appointed, the board may not act until after the new members have been sworn in. The term and conditions of employment shall be stated in a written contract which shall be entered into between the board of education and the superintendent. A copy of the contract shall be filed with the Superintendent of Public Instruction before any person is eligible for this office. A certification to the county board of education by the Superintendent of Public Instruction showing that the person proposed for the office of county superintendent of schools holds a superintendent certificate and has had three years experience in school work in the past 10 years, together with a doctor's certificate showing the person to be free from any contagious or communicable disease, shall make any person eligible for this office.

If any board of education shall elect a person to serve as superintendent of schools in any local school administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The city board of education may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract at any time during the final year of his term: Provided, however, in any year when new members are to be elected or appointed, the board may not act until after the new members have been sworn in. The election shall be held biennially or quadrennially, as the case may be, during the month of April. (1981, c. 423, s. 1.)

§ 115C-272. Residence, oath of office, and salary of superintendent.

(a) Every superintendent shall reside in the county in which he is employed. The superintendent shall not teach, nor be regularly employed in any other capacity that may limit or interfere with his duties as superintendent. Each superintendent, before entering upon the duties of his office, shall take an oath for the faithful performance thereof. The salary of the superintendent shall be in accordance with a State standard salary schedule, fixed and determined by the State Board of Education as provided by law; and such salary schedule for superintendents shall be determined on the same basis for both county and city superintendents and shall take into consideration the amount of work inherent to the office of both county and city superintendents; and such schedule shall be published in the same way and manner as the schedules for teacher and principal salaries are now published.

(b) Superintendents shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All superintendents employed by any local school administrative unit or school district who are paid from local funds shall be paid promptly as provided by law and as State allotted superintendents are paid. Superintendents paid from State funds shall be paid as follows:

- (1) The salaries of superintendents shall be paid monthly on the basis of each calendar month of service. Included within their term of employment shall be 1.25 days of annual vacation leave for each month of the 12 months' service. Included within the 12 months' employment each

local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

- (2) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year: Provided, that superintendents may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until December 31 of each year. On December 31 of each year, any superintendent with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to January 1 of the next year. All vacation leave taken by the superintendent will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining non-workdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.
- (3) Each local board of education shall sustain any loss by reason of an overpayment to any superintendent paid from State funds.
- (4) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(c) The State Board of Education, in fixing the State standard salary schedule of superintendents as authorized by law, shall provide that superintendents who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States. (1955, c. 1372, art. 6, s. 1; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 946, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 946, s. 1, substituted the fifth through ninth sentences in subdivision (b)(2) for a former last sentence which provided for the

automatic cancellation of any accumulated leave not used prior to the termination of employment.

§ 115C-273. Salary schedule for superintendents.

Every local board of education may adopt, as to assistant or associate superintendents not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. (1955, c. 1372, art. 5, s. 32; 1965, c. 584, s. 3; 1981, c. 423, s. 1.)

§ 115C-274. Removal for cause.

(a) Local boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who shall fail or refuse to perform the duties required of him by law. In case the Superintendent of Public Instruction shall have sufficient evidence at any time that any superintendent of schools is not capable of discharging, or is not discharging, the duties of his office as required by law or is guilty of immoral or disreputable conduct, he shall report this matter to the board of education employing said superintendent of schools. It shall then be the duty of said board of education to hear the evidence in such case and, if after careful investigation it shall find the charges true, it shall declare the office vacant at once and proceed to elect a successor: Provided, that such superintendent shall have the right to try his title to office in the courts of the State.

(b) If the superintendent shall fail in the duties enumerated in G.S. 115C-276(g) through (i) or such other duties as may be assigned him, he shall be subject, after notice, to an investigation by the Superintendent of Public Instruction or by his board of education for failure to perform his duties. For persistent failure to perform these duties, his certificate may be revoked by the Superintendent of Public Instruction, or he may be dismissed by his board of education. (1955, c. 1372, art. 5, s. 25; art. 6, s. 4; 1981, c. 423, s. 1.)

§ 115C-275. Vacancies in office of superintendent.

In case of vacancy by death, resignation, or otherwise, in the office of a superintendent, such vacancy shall be filled by the local board of education in which such vacancy occurred. If the vacancy is filled on a temporary basis, subject to the same approvals and to the same educational qualifications as provided for superintendents, the individual appointed to fill the vacancy on a temporary basis shall be paid the salary provided for superintendents. During the time any superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the Superintendent of Public Instruction and the controller of the State Board of Education, any duty or duties of such superintendent which necessity requires be performed during such time: Provided, that if the duty of signing warrants and checks is so assigned, said board shall give proper notice immediately to State and local disbursing officials. (1955, c. 1372, art. 6, s. 2; 1959, c. 573, s. 3; 1977, c. 298; 1981, c. 423, s. 1.)

§ 115C-276. Duties of superintendent.

(a) In General. — All acts of local boards of education, not in conflict with State law, shall be binding on the superintendent, and it shall be his duty to carry out all rules and regulations of the board.

All the powers, duties and responsibilities imposed by law upon the superintendents of county administrative units shall, with respect to city administrative units, be imposed upon, and exercised by, the superintendents of city administrative units, in the same manner and to the same extent, insofar as applicable thereto, as such powers and duties are exercised and performed by superintendents of county administrative units with reference to said county administrative units.

(b) To Serve as Secretary to Board. — Superintendents shall be ex officio secretary to their respective boards of education. As secretary to the board of education, the superintendent shall record all proceedings of the board, issue all notices and orders that may be made by the board, and otherwise be executive officer of the board of education. He shall see that the minutes of the meetings of the board of education are promptly and accurately recorded in the minute book which shall be kept in the office of the board of education and be open at all times to public inspection.

(c) To Monitor Condition of School Plants. — It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediate provisions to remedy any unsafe or unsanitary conditions existing in any school building.

(d) To Attend Professional Meetings. — It shall be the duty of every superintendent to attend professional meetings conducted by the State Superintendent of Public Instruction and such other professional meetings as are necessary to keep him informed on educational matters.

(e) To Report Certain Information to the Superintendent of Public Instruction. — It shall be the duty of every superintendent to furnish as promptly as possible to the State Superintendent when requested by him, information and statistics on any phase of the school work in his administrative unit.

(f) To Administer Oaths When Required. — The superintendent shall have authority to administer oaths to teachers and all other school officials when an oath is required of the same.

(g) To Familiarize Himself with and to Implement State Policies and Rules. — It shall be the duty of the superintendent to keep himself thoroughly informed as to all policies promulgated and rules adopted by the State Superintendent of Public Instruction and the State Board of Education, for the organization and government of the public schools. The superintendent shall notify and inform his board of education, the school committees, supervisors, principals, teachers, janitors, bus drivers, and all other persons connected with the public schools, of such policies and rules. In the performance of these duties, the superintendent shall confer, work, and plan with all school personnel to achieve the best methods of instruction, school organization and school government.

(h) To Hold Necessary Teachers' Meetings. — The superintendent shall hold each year such teachers' meetings and study groups as in his judgment will improve the efficiency of the instruction in the schools of his unit.

(i) To Distribute Certain Supplies and Information. — The superintendent shall distribute to all school personnel all blanks, registers, report cards, record books, bulletins, and all other supplies and information furnished by the State Superintendent and the State Board of Education and give instruction for their proper use.

(j) To Assist the Local Board in Electing School Personnel. — It shall be the duty of the county superintendent to approve, in his discretion, the election of

all teachers and personnel by the several school committees of the administrative unit. He shall then present the names of all principals, teachers and other school personnel to the county board of education for approval or disapproval, and he shall record in the minutes the action of the board in this matter: Provided, that in county administrative units which elect to operate as one school district without a school committee it shall be the duty of the county superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the county administrative unit.

It shall be the duty of the city superintendent to record in the minutes the action of the city board of education in the election of all principals, teachers and other school personnel elected upon the recommendation of the superintendent.

(k) To Submit Organization Statement and other Information to the State Board. — Each year the superintendent of each local school administrative unit shall submit to the State Board of Education statements, certified by the chairman of the board of education, showing the organization of the schools in his unit and any additional information the State Board may require.

At the end of the first month of school each year, the superintendent of each local school administrative unit shall report school organization, employees' duties and teaching loads to the State Board as provided in G.S. 115C-47(10).

(l) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher and shall participate in the firing and demoting of staff as provided in G.S. 115C-325.

(m) To Furnish Boundaries of Special Taxing Districts. — It shall be the duty of county superintendents, and of city superintendents where their administrative units are not coterminous with city or township limits, to furnish tax listers at tax listing time the boundaries of each taxing district and city administrative unit in which a special tax will be levied to the end that all property in such district or unit may be properly listed.

(n) To Issue Salary Vouchers. — The authority for a superintendent to issue vouchers for the salary of all school employees, whether paid from State or local funds, shall be a monthly payroll, prepared on forms furnished by the State Board of Education and containing all information required by the controller of the State Board of Education. This monthly payroll shall be signed by the principal of the school. If any voucher so drawn is chargeable against district funds, the amount so charged and the district to which said amount is charged shall be specified on the voucher. The superintendent shall not approve the vouchers for the pay of principals or teachers until the monthly and annual reports required by the local board of education are made.

(o) To Participate in the School Budget and Finances. — The superintendent shall participate in the school budget and finances, as provided in Article 31 of this Chapter.

(p) To Require Teachers and Principals to Make Reports. — The superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent. Any superintendent who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction. (1955, c. 1372, art. 5, s. 24; art. 6, ss. 3-6, 10, 15; art. 17, s. 6; art. 18, s. 7; 1959, c. 1294; 1963, c. 688, s. 3; 1965, c. 584, ss. 5, 6, 16; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1.)

Cross References. — As to the superintendent's recommendations for principals and supervisors, see § 115C-284.

As to the allocation of teachers by the State Board of Education based on the local organization statements, see § 115C-301.

§ 115C-277. Office, equipment, and clerical assistance to be provided by board.

It shall be the duty of the various boards of education to provide the superintendent of schools with an appropriate office. Likewise, it shall be the duty of the various boards of education to furnish adequately the superintendent's office and provide all necessary office supplies. Authority is hereby given to boards of education to employ sufficient clerical assistants and purchase sufficient office machines and equipment to the end that the business of the superintendent of schools shall always be conducted in a prompt and efficient manner. (1955, c. 1372, art. 5, s. 23; 1981, c. 423, s. 1.)

§ 115C-278. Assistant superintendent and associate superintendent.

Local boards of education shall have authority to employ an assistant superintendent, in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent shall be assigned by the superintendent with the approval of the board of education.

Local boards of education may, upon the recommendation of the superintendent, elect assistant or associate superintendents for a term of from one to four years. The term may not, however, exceed the expiration date of the superintendent's contract, unless the remaining time of the superintendent's contract is less than one year. If there is less than one year remaining on the superintendent's contract, the assistant or associate superintendent shall be given a contract through the next school year.

The term of employment shall be stated in a written contract which shall be entered into between the board of education and the assistant or associate superintendent, a copy of which shall be filed with the Superintendent of Public Instruction as a matter of information. The assistant or associate superintendent may not be dismissed during the term to which he is elected except for misconduct of such a nature as to indicate he is unfit to continue in his position, incompetence, neglect of duty, or failure or refusal to carry out validly assigned duties. (1955, c. 1372, art. 5, s. 27; 1971, c. 1188, s. 1; 1973, c. 733; 1981, c. 423, s. 1.)

§§ 115C-279 to 115C-283: Reserved for future codification purposes.

ARTICLE 19.

Principals and Supervisors.

§ 115C-284. Method of selection and requirements.

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

(d) No certificate issued by the Board shall be valid until approved and signed by the superintendent of the local school administrative unit in which the holder of said certificate resides, or contracts to teach, and the certificate when so approved shall be of statewide validity. Should any superintendent refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter.

(e) It shall be unlawful for any board of education or school committee to employ or keep in service any principal or supervisor who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

(f) The allotment of classified principals shall be one principal for each duly constituted school with seven or more State-allotted teachers and shall be included in the calculation of the allotment of general teachers set out in G.S. 115C-301(b)(i).

(g) Local boards of education shall have authority to employ supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the local school administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such supervisors shall be assigned by the superintendent with the approval of the board of education.

(h) All principals and supervisors employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe. (1955, c. 1372, art. 5, ss. 4, 27; art. 6, s. 6; art. 18, ss. 1-4; 1963, c. 688, s. 3; 1965, c. 584, ss. 6, 20.1; 1969, c. 539; 1971, c. 1188, s. 1; 1973, cc. 236, 733; c. 770, ss. 1, 2; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1.)

§ 115C-285. Salary.

(a) Principals and supervisors shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All principals and supervisors employed by any local school administrative unit or school district who are to be paid from local funds shall be paid promptly as provided by law and as State-allotted principals and supervisors are paid.

Principals and supervisors paid from State funds shall be paid as follows:

- (1) Classified principals and State-allotted supervisors shall be employed for a term of 12 calendar months and shall be paid monthly at the end of each calendar month of service for the term of their employment. They shall earn annual leave at the rate of 1.25 days per month employed; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor. They shall be provided by the board the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.
- (2) Supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until December 31 of each year. On December 31 of each year, any supervisor or principals with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to January 1 of the next year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining non-workdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.
- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year, except as provided in subdivision (5) of this section.
- (4) Each local board of education shall sustain any loss by reason of an overpayment to any principal or supervisor paid from State funds.
- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.
- (6) The State Board of Education, in fixing the State standard salary schedule of principals as authorized by law, shall provide that principals who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service, shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals or superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(7) All persons employed as principals in the schools and institutions listed in subsection (p) of G.S. 115C-325 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education.

(b) Every local board of education may adopt, as to principals and supervisors not paid out of State funds, a salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) The board of education may withhold the salary of any supervisor or principal who delays or refuses to render such reports as are required by law, but when the reports are delivered in accordance with law, the salary shall be paid forthwith. (1955, c. 1372, art. 5, s. 32; art. 6, s. 13; art. 17, s. 9; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, c. 383; c. 437, s. 9; c. 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 4; c. 946, s. 2.)

Effect of Amendments. — Session Laws 1981, c. 639, s. 4, effective July 1, 1981, with respect to school years beginning with the 1981-82 school year, added the language beginning "on a day that" at the end of the second sentence of subdivision (a)(1).

Session Laws 1981, c. 946, s. 2, substituted the fourth through eighth sentences of subdivision (a)(2) for a former last sentence which provided for the automatic cancellation of any accumulated leave not used prior to the termination of employment.

§ 115C-286. Rules for conduct of principals and supervisors.

The conduct of principals and supervisors, the kind of reports they shall make, and their duties in the care of school property are subject to the rules of the local board, as provided in G.S. 115C-47(18). (1981, c. 423, s. 1.)

§ 115C-287. Tenure as principal or supervisor.

Tenure of a principal or supervisor shall be determined in accordance with the provisions of G.S. 115C-325. (1981, c. 423, s. 1.)

§ 115C-288. Powers and duties of principal.

(a) To Grade and Classify Pupils. — The principal shall have authority to grade and classify pupils.

(b) To Make Accurate Reports to the Superintendent and to the Local Board. — The principal shall make all reports to the superintendent. Every principal of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of principals until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals and principals to make reports to the superintendent: Provided further, that any principal or supervisor who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of his duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(c) To Improve Instruction and Community Spirit. — The principal shall give suggestions to teachers for the improvement of instruction.

(d) To Conduct Fire Drills and Inspect for Fire Hazards. — It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage areas as well as all classrooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file a written report once each month during the regular school session with his local school committee, and two copies of this report with the superintendent of his local school administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the local board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education.

It shall be the duty of the principal to minimize fire hazards pursuant to the provisions of G.S. 115C-525.

(e) To Discipline Students and to Assign Duties to Teachers With Regard to the Discipline, General Well-being, and Medical Care of Students. — The principal shall have authority to exercise discipline over the pupils of the school. The principal shall use reasonable force to discipline students and shall assign duties to teachers with regard to the general well-being and the medical care of students pursuant to the provisions of G.S. 115C-307 and 115C-390. The principal also may suspend or dismiss pupils pursuant to the provisions of G.S. 115C-391.

(f) To Protect School Property. — The principal shall protect school property as provided in G.S. 115C-523. (1955, c. 1372, art. 17, ss. 6, 8; 1957, c. 843; 1959, c. 573, s. 13; c. 1294; 1965, c. 584, s. 15; 1981, c. 423, s. 1.)

Legal Periodicals. — For note on corporal punishment, see 50 N.C.L. Rev. 911 constitutional restrictions on the infliction of (1972).

CASE NOTES

Editor's Note. — The annotations under this section are from a case decided under former § 115-146.

Local school boards and school officials have the implied right to adopt appropriate and reasonable rules and regulations for the purpose of carrying out their powers and duties. *Fowler v. Williamson*, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

School Dress Code. — A school may adopt a dress code and may exclude a student from

participating in certain school programs, including graduation ceremonies, if the student does not comply with the dress code. *Fowler v. Williamson*, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

Violation of Dress Code. — Where the principal of a high school established a lawful and valid dress code for eligible graduates participating in the graduation ceremony, and the plaintiffs' son appeared for the graduation ceremony attired in violation of the code in that

he did not wear dress pants as required but instead wore denim jeans, the defendant principal had the legal right to exclude plaintiffs'

son from the graduation ceremony for violation of the dress code. *Fowler v. Williamson*, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

§ 115C-289. Assignment of principal's duties to assistant or acting principal.

Any duty or responsibility assigned to a principal by statute, State Board of Education regulation, or by the superintendent may, with the approval of the local board of education, be assigned by the principal to an assistant principal designated by the local board of education or to an acting principal designated by a principal. (1977, c. 539; 1981, c. 423, s. 1.)

§§ 115C-290 to 115C-294: Reserved for future codification purposes.

ARTICLE 20.

Teachers.

§ 115C-295. Minimum age and certificate prerequisites.

(a) All teachers employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe: Provided further, that no person shall be employed to teach who is under 18 years of age.

(b) It shall be unlawful for any board of education or school committee to employ or keep in service any teacher who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372, art. 18, ss. 1, 4; 1975, c. 437, s. 7; c. 731, ss. 1, 2; 1981, c. 423, s. 1.)

§ 115C-296. Board sets certification requirements.

The State Board of Education shall have entire control of certifying all applicants for teaching positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. (1955, c. 1372, art. 18, s. 2; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 686, s. 1; 1981, c. 423, s. 1.)

§ 115C-297. Local board of education approves certificate.

No certificate issued by the board shall be valid until approved and signed by the superintendent of the local school administrative unit in which the holder of said certificate resides, or contracts to teach, and the certificate when so approved shall be of statewide validity. Should any superintendent refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter. (1955, c. 1372, art. 18, s. 3; 1981, c. 423, s. 1.)

§ 115C-298. Colleges may assist teachers in certification.

Each and every college or university of the State is hereby authorized to aid public school teachers or prospective teachers in securing, raising, or renewing their certificates, in accordance with the rules and regulations of the State Board of Education. (1955, c. 1372, art. 18, s. 5; 1981, c. 423, s. 1.)

§ 115C-299. Hiring of teachers.

(a) In the city administrative units, teachers shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

Teachers shall be elected by the county and city boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) No person otherwise qualified shall be denied the right to receive credentials from the State Board of Education, to receive training for the purpose of becoming a teacher, or to engage in practice teaching in any school on the grounds he is totally or partially blind; nor shall any school district refuse to engage a teacher on such grounds, so long as such blind teacher is able to carry out the duties of the position for which he applies in the school district. (1955, c. 1372, art. 5, s. 4; 1971, c. 949; 1981, c. 423, s. 1.)

CASE NOTES

Superintendent Entitled to Recommend against Rehiring. — A school board's failure to renew a probationary teacher's contract because the principal and superintendent recommended that he not be rehired would not be arbitrary, capricious, or for personal reasons, since the superintendent is entitled to make such recommendations. *Hasty v. Bellamy*, 44 N.C. App. 15, 260 S.E.2d 135 (1979), (decided under former § 115-21).

No Claim Based on Failure to Renew Contract. — Plaintiff stated no claim for relief against a school superintendent and principal in an action to recover damages arising from the failure to renew plaintiff's contract as a teacher since the power to hire teachers rests in the school board. *Hasty v. Bellamy*, 44 N.C. App. 15, 260 S.E.2d 135 (1979), (decided under former § 115-21).

§ 115C-300. In-service training.

Local boards of education are authorized to provide for the professional growth of teachers while in service and to pass rules and regulations requiring teachers to cooperate with their superintendent for the improvement of instruction in the classroom and for promoting community improvement. (1955, c. 1372, art. 5, s. 29; 1981, c. 423, s. 1.)

§ 115C-301. Allocation of teachers; class size.

(a) On the basis of the organization statements, submitted as provided in G.S. 115C-276(k) and any other information considered relevant, the State Board of Education shall determine for each local school administrative unit the number of teachers and other instructional personnel to be included in the State budget.

(b) The State Board of Education shall allocate teachers and instructional personnel to the various local school administrative units in the following separate categories: (i) general teachers, including classified principals, (ii) vocational teachers, (iii) special education teachers.

(c) The State Board of Education is authorized to promulgate rules and regulations to make the allotment of instructional personnel and teachers.

(d) Upon receipt of the allotments, local boards of education shall organize schools and assign teachers to achieve the following class size maximums:

- (1) No more than 26 students per teacher in average daily membership for grades one through three.
- (2) No more than 33 students per teacher in average daily membership for the upper elementary grades.
- (3) No more than 35 students per class except as permitted by local boards of education and no more than 150 students per day in average daily membership for teachers in high schools and junior high schools except as permitted by regional accrediting agencies.

(e) When class-size maximums are achieved, a local board of education may assign other teachers to teaching or nonteaching duties in the various schools.

(f) It shall be the duty of teachers to notify the superintendent of any deviation from allowable class size, as provided in G.S. 115C-47(10). (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1.)

Cross References. — As to certification of allotment of classified principals, see teacher allotments, see 115C-29. As to the § 115C-284.

§ 115C-302. Salary and vacation.

(a) Teachers shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All teachers employed by any local school administrative unit or school district who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted teachers are paid.

Teachers paid from State funds shall be paid as follows:

- (1) Academic Teachers. — Regular State-allotted teachers shall be employed for a period of 10 calendar months and shall be paid monthly at the end of each calendar month of service: Provided, that any individual teacher may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the local school administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said local school administrative unit; nor shall such payment apply to any teacher who is employed for a period of less than 10 months. Included within the 10 calendar months employment shall be 1.25 days of annual vacation leave for each month of the 10 months service which shall be designated by each local board of education at a time when students are not scheduled to be in regular attendance. Included

within the 10 calendar months employment each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment for academic teachers as those designated by the State Personnel Commission for State employees on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, a teacher may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Within policy adopted by the State Board of Education, each local board of education shall develop rules and regulations designating what additional portion of the 10 calendar months not devoted to classroom teaching, holidays, or annual leave shall apply to service rendered before the opening of the school term, during the school term, and after the school term and to fix and regulate the duties of State-allotted teachers during said period, but in no event shall the total number of workdays exceed 200 days. Local boards of education shall consult with the employed public school personnel in the development of the 10-calendar-months schedule.

- (2) Occupational Education Teachers. — State-allotted man-months of service to local boards of education as provided by the State Board of Education shall be used for the employment of teachers of occupational education for a term of employment as determined by the local boards of education and teachers so employed shall be paid on a calendar-month basis at the end of each calendar month of service for the term of their employment: Provided, that any individual teacher employed for a term of 10 calendar months may be paid in 12 monthly installments if the teacher so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the teacher. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract made between the teacher and the said administrative unit. Included within their term of employment shall be the same rate of annual vacation leave and legal holidays provided under the same conditions as set out in subdivision (1) above, but in no event shall the total workdays for a 10-month employee exceed 200 days in a 10-month schedule and the workweek shall constitute five days for all occupational teachers regardless of the employment period.

No deductions shall be made from salaries of teachers of vocational agriculture and home economics whose salaries are paid in part from State and federal vocational funds while in attendance upon community, county and State meetings called for the specific purpose of promoting the agricultural interests of North Carolina, when such attendance is approved by the superintendent of the administrative unit and the State Director of Vocational Education.

- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year.
- (4) Each local board of education shall sustain any loss by reason of an overpayment to any teacher paid from State funds.
- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State

Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

- (6) The State Board of Education, in fixing the State standard salary schedule of teachers as authorized by law, shall provided that teachers who entered the armed or auxiliary forces of the United States after September 16, 1940, and who left their positions for such service shall be allowed experience increments for the period of such service as though the same had not been interrupted thereby, in the event such persons return to the position of teachers, principals and superintendents in the public schools of the State after having been honorably discharged from the armed or auxiliary forces of the United States.

(b) All persons employed as teachers in the schools and institutions listed in subsection (p) of G.S. 115C-325 shall be compensated at the same rate as are teachers in the public schools in accordance with the salary schedule adopted by the State Board of Education.

(c) Every local board of education may adopt, as to teachers not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force. No teacher shall receive a salary higher than that provided in the salary schedule, unless by action of the board of education a higher salary is allowed for special fitness, special duties, or under extraordinary circumstances.

Whenever a higher salary is allowed, the minutes of the board shall show what salary is allowed and the reason for the same: Provided, that a county board of education, upon the recommendation of the committee of a district, may authorize the committee and the superintendent to supplement the salaries of all teachers of the district from funds derived from taxes within such district, and the minutes of the board shall show what increase is allowed each teacher in each such district: Provided, further, that when one or more local tax districts have been combined to create an administrative district, the county board of education may supplement the salaries of all teachers of each local tax district, from funds derived from taxes collected within such local tax district, and the minutes of the board shall show what increase is allowed each teacher in each such district.

(d) Longevity pay for ten-month employees is based on their annual salary and the longevity percentage may not be reduced by prorating the longevity pay for 10-month employees over a 12-month period. (1955, c. 1372, art. 5, s. 32; art. 17, s. 9; art. 18, ss. 6, 7; 1961, c. 1085; 1965, c. 584, ss. 3, 16; 1971, c. 1052; 1973, c. 315, s. 2; c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, s. 1; c. 947, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 639, s. 1, effective July 1, 1981, with respect to school years beginning with the 1981-82 school year, added the language

beginning "on a day that" at the end of the fourth sentence of subdivision (a)(1).

Session Laws 1981, c. 947, s. 1, added subsection (d).

§ 115C-303. Withholding of salary.

(a) No teacher shall be placed on the payroll of a local school administrative unit unless he holds a certificate as required by law, and unless a copy of the teacher's contract has been filed with the superintendent. No teacher may be paid more than he is due under the local school salary schedule in force in the

local school administrative unit or special taxing district. Substitute and interim teachers shall be paid under rules of the State Board of Education.

(b) The board of education may withhold the salary of any teacher who delays or refuses to render such reports as are required by law, but when the reports are delivered in accordance with law, the salary shall be paid forthwith. (1955, c. 1372, art. 6, ss. 11, 13; 1975, c. 437, ss. 8, 9; 1981, c. 423, s. 1.)

§ 115C-304. Teacher tenure.

Tenure of teachers shall be determined in accordance with the provisions of G.S. 115C-325. (1981, c. 423, s. 1.)

§ 115C-305. Appeals to board of education and to superior court.

Appeals to the local board of education or to the superior court shall lie from the decisions of all school personnel, including decisions affecting character or the right to teach, as provided in G.S. 115C-45(c). (1981, c. 423, s. 1.)

§ 115C-306. Reducing employment term of occupational education teacher.

The following procedures shall be complied with before any local board of education may take any action reducing the term of employment of any occupational education teacher:

- (1) At least 60 calendar days prior to the beginning date of any reduction in the term of employment, the board shall give written notice to the occupational education teacher of its intentions and reasons for the proposed action.
- (2) Within 15 calendar days of receipt of this written notice, the occupational education teacher may request a hearing before the board. The board shall conduct such hearing within 20 calendar days of receipt of the request with the occupational education teacher being given at least 10 calendar days' notice of the date of hearing.
- (3) At the hearing, the occupational education teacher may be accompanied by a representative of his choice and may present such witnesses and other evidence as he may wish in order to show that a reduction in his term of employment is unjustified or arbitrary.
- (4) After the hearing, the board shall make its decision and notify the occupational education teacher in writing.
- (5) Any occupational education teacher whose term of employment has been reduced by the board pursuant to this section shall have the right to appeal from the decision of the board to the superior court for the judicial district in which the occupational education teacher is employed. The appeal shall be filed within a period of 30 calendar days after notification of the decision of the board.

The board shall advise the Division of Occupational Education of the Department of Public Instruction of its intention to reduce the term of employment of an occupational education teacher at least 90 calendar days prior to the effective date of reduction in his term of employment. (1973, c. 780, s. 1; 1981, c. 423, s. 1)

§ 115C-307. Duties of teachers.

(a) To Maintain Order and Discipline. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teacher aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to maintain good order and discipline in their respective schools.

(b) To Provide for General Well-Being of Students. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teacher aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to encourage temperance, morality, industry, and neatness; to promote the health of all pupils, especially of children in the first three grades, by providing frequent periods of recreation, to supervise the play activities during recess, and to encourage wholesome exercises for all children.

(c) To Provide Some Medical Care to Students. — It is within the scope of duty of teachers, including substitute teachers, teacher aides, student teachers or any other public school employee when given such authority by the board of education or its designee, (i) to administer any drugs or medication prescribed by a doctor upon written request of the parents, (ii) to give emergency health care when reasonably apparent circumstances indicate that any delay would seriously worsen the physical condition or endanger the life of the pupil, and (iii) to perform any other first aid or life saving techniques in which the employee has been trained in a program approved by the State Board of Education: Provided, that no one shall be required to administer drugs or medication or attend life saving techniques programs.

At the commencement of each school year, but prior to the beginning of classes, and thereafter as circumstances require, the principal of each school shall determine which persons will participate in the medical care program.

(d) To Teach the Students. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teacher aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to teach as thoroughly as they are able all branches which they are required to teach; to provide for singing in the school, and so far as possible to give instruction in the public school music.

(e) To Enter into the Superintendent's Plans for Professional Growth. — It shall be the duty of all teachers, including student teachers, substitute teachers, voluntary teachers, teacher aides and assistants when given authority over some part of the school program by the principal or supervising teacher, to enter actively into the plans of the superintendent for the professional growth of the teachers.

(f) To Discourage Nonattendance. — Teachers shall cooperate with the principal in ascertaining the cause of nonattendance of pupils that he may report all violators of the compulsory attendance law to the attendance officer in accordance with rules promulgated by the State Board of Education.

(g) To Make Required Reports. — Every teacher of a public school shall make such reports as are required by the boards of education, and the superintendent shall not approve the vouchers for the pay of teachers until the required monthly and annual reports are made: Provided, that the superintendents may require teachers to make reports to the principals. Provided further, that any teacher who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports required to be made to any board or officer in the performance of their duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction.

(h) **To Take Care of School Buildings.** — It shall be the duty of every teacher to instruct children in proper care of property and to exercise due care in the protection of school property, in accordance with the provisions of G.S. 115C-523. (1955, c. 1372, art. 17, ss. 4, 6; 1959, cc. 1016, 1294; 1969, c. 638, ss. 2, 3; 1971, c. 434; 1981, c. 423, s. 1.)

Legal Periodicals. — For note on corporal punishment, see 50 N.C.L. Rev. 911 (1972).

CASE NOTES

Editor's Note. — The annotations under this section are from cases decided under former § 115-146.

Local school boards and school officials have the implied right to adopt appropriate and reasonable rules and regulations for the purpose of carrying out their powers and duties. *Fowler v. Williamson*, 39 N.C. App. 715, 251 S.E.2d 889 (1979).

The regulations prescribing a teacher's speech and conduct are necessarily broad;

they cannot possibly mention every specific kind of misconduct. The application of the regulations in each case depends on many factors, such as the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the context and manner of presentation. *Frison v. Franklin County Bd. of Educ.*, 596 F.2d 1192 (4th Cir. 1979).

§ 115C-308. Rules for teacher's conduct.

The conduct of teachers, the kind of reports they shall make, and their duties in the care of school property are subject to the rules and regulations of the local board, as provided in G.S. 115C-47(18). (1981, c. 423, s. 1.)

§ 115C-309. Student teachers.

(a) **Student Teacher and Student Teaching Defined.** — A "student teacher" is any student enrolled in an institution of higher education approved by the State Board of Education for the preparation of teachers who is jointly assigned by that institution and a local board of education to student-teach under the direction and supervision of a regularly employed certified teacher.

"Student teaching" may include those duties granted to a teacher by G.S. 115C-307 and 115C-390 and any other part of the school program for which either the supervising teacher or the principal is responsible.

(b) **Legal Protection.** — A student teacher under the supervision of a certified teacher or principal shall have the protection of the laws accorded the certified teacher.

(c) **Assignment of Duties.** — It shall be the responsibility of a supervising teacher, in cooperation with the principal and the representative of the teacher-preparation institution, to assign to the student teacher responsibilities and duties that will provide adequate preparation for teaching. (1969, c. 638, s. 1; 1981, c. 423, s. 1.)

§§ 115C-310 to 115C-314: Reserved for future codification purposes.

ARTICLE 21.

Other Employees.

§ 115C-315. Hiring of school personnel.

(a) In the city administrative units, janitors and maids shall be appointed by the board of education of such local school administrative unit upon the recommendation of the superintendent.

(b) School personnel shall be elected by the local board of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(c) Prerequisites for Employment. — All professional personnel employed in the public schools of the State or in schools receiving public funds shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.

(d) The State Board of Education shall have entire control of certifying all applicants for professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his or her academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

(e) Local Approval of Certificate Required. — No certificate issued by the Board shall be valid until approved and signed by the superintendent of the administrative unit in which the holder of said certificate resides, or contracts to teach, and the certificate when so approved shall be of statewide validity. Should any superintendent refuse to approve and sign any such certificate, he shall notify the State Board of Education and state in writing the reasons for such refusal. The said Board shall have the right, upon appeal by the holder of said certificate, to review and investigate and finally determine the matter.

(f) Employing Persons Not Holding nor Qualified to Hold Certificate. — It shall be unlawful for any board of education or school committee to employ or keep in service any professional person who neither holds nor is qualified to hold a certificate in compliance with the provisions of the law or in accordance with the regulations of the State Board of Education. (1955, c. 1372, art. 5, s. 4; art. 18, ss. 1-4; 1965, c. 584, s. 20.1; 1973, c. 236; 1975, c. 437, s. 7; c. 686, s. 1; c. 731, ss. 1, 2; 1981, c. 423, s. 1.)

§ 115C-316. Salary and vacation.

(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit or school district who are to be paid from

local funds shall be paid promptly as provided by law and as State-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

- (1) **Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis.** — The salaries of employees other than superintendents, supervisors and classified principals employed on an annual basis shall be paid monthly on the basis of each calendar month of service. Included within their term of employment shall be provided 1.25 days of annual vacation leave time for each calendar month of service; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.
- (2) **School Employees Paid on an Hourly or Other Basis.** — School employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2) and 115C-316(a)(1) shall be paid at a time determined by each local board of education and expenditures from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that any individual school employee employed for a term of 10 calendar months may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Included within the term of employment shall be provided for full-time employees 1.25 days of annual vacation leave time for each calendar month of service, to be taken under policies determined by each local board of education; on a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment as those designated by the State Personnel Commission for State employees.
- (3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year: Provided, that
- (4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until December 31 of each year. On December 31 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation cancelled so

that only 30 days are carried forward to January 1 of the next year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining non-workdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

- (5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars (\$50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

- (6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds.

(b) Every local board of education may adopt, as to school officials other than superintendents, principals and supervisors not paid out of State funds, a salary schedule similar to the State salary schedule, but it likewise shall recognize a difference in salaries based on different duties, training, experience, professional fitness, and continued service in the same school system; but if any local board of education shall fail to adopt such a schedule, the State salary schedule shall be in force.

(c) Longevity pay for 10-month employees is based on their annual salary and the longevity percentage may not be reduced by prorating the longevity pay for 10-month employees over a 12-month period. (1955, c. 1372, art. 5, s. 32; art. 18, s. 6; 1961, c. 1085; 1965, c. 584, s. 3; 1971, c. 1052; 1973, c. 647, s. 1; 1975, cc. 383, 608; c. 834, ss. 1, 2; 1979, c. 600, ss. 1-5; 1981, c. 423, s. 1; c. 639, ss. 2, 3; c. 730, s. 1; c. 946, s. 3; c. 947, s. 2.)

Effect of Amendments. — Session Laws 1981, c. 639, ss. 2, 3, effective July 1, 1981, with respect to school years beginning with the 1981-82 school year, added the language beginning "on a day that" at the end of the second sentence of subdivision (a)(1) and added the same language at the end of the fourth sentence of subdivision (a)(2).

Session Laws 1981, c. 730, s. 1, effective July 1, 1981, substituted "other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2) and 115C-316(a)(1)" for

"paid on an hourly basis or on a basis other than a 10-month or 12-month basis" near the beginning of the first sentence of subdivision (a)(2).

Session Laws 1981, c. 946, s. 3, substituted the fourth through eighth sentences in subdivision (a)(4) for a former last sentence which provided for the automatic cancellation of any accumulated leave not used prior to the termination of employment.

Session Laws 1981, c. 947, s. 2, added subsection (c).

§ 115C-317. Penalty for making false reports or records.

Any school employee of the public schools other than a superintendent, principal, or teacher, who knowingly and willfully makes or procures another to make any false report or records, requisitions, or payrolls, respecting daily attendance of pupils in the public schools, payroll data sheets, or other reports

required to be made to any board or officer in the performance of his duties, shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned in the discretion of the court and the certificate of such person to teach in the public schools of North Carolina shall be revoked by the Superintendent of Public Instruction. (1955, c. 1372, art. 17, s. 6; 1959, c. 1294; 1981, c. 423, s. 1.)

§§ 115C-318 to 115C-322: Reserved for future codification purposes.

ARTICLE 22.

General Regulations.

Part 1. Health Certificate.

§ 115C-323. Employee health certificate.

All public school employees upon initial employment, and those who have been separated from public school employment more than one school year, including superintendents, supervisors, district principals, building principals, teachers, and any other employees in the public schools of the State, shall file in the office of the superintendent, before assuming his duties, a certificate from a physician licensed to practice medicine in the State of North Carolina, certifying that said person does not have tuberculosis in the communicable form, or other communicable disease, or any disease, physical or mental, which would impair the ability of the said person to perform effectively his duties. A local school board or a superintendent may require any person herein named to take a physical examination when deemed necessary.

Any public school employee who has been absent for more than 40 successive school days because of a communicable disease must, before returning to work, file with the superintendent a physician's certificate certifying that the individual is free from any communicable disease.

The examining physician shall make the aforesaid certificates on an examination form supplied by the Superintendent of Public Instruction. The certificate shall be issued only after a physical examination has been made at the time of the certification, and such examination shall be in accordance with rules and regulations adopted by the Superintendent of Public Instruction, with approval of the Secretary of Human Resources, and such rules and regulations may include the requirement of an X-ray chest examination for all new employees of the public school system.

It shall be the duty of the superintendent of the school in which the person is employed to enforce the provisions of this section.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and subject to a fine or imprisonment in the discretion of the court. (1955, c. 1372, art. 17, s. 1; 1957, c. 1357, ss. 2, 14; 1973, c. 476, s. 128; 1975, c. 72; 1981, c. 423, s. 1.)

Part 2. Payment of Wages after Death of Employee.

§ 115C-324. Disposition of payment due employees at time of death.

In the event of the death of any superintendent, teacher, principal, or other school employee to whom payment is due for or in connection with services rendered by such person or to whom has been issued any uncashed voucher for or in connection with services rendered, when there is no administration upon the estate of such person, such voucher may be cashed by the clerk of the superior court of the county in which such deceased person resided, or a voucher due for such services may be made payable to such clerk, who will treat such sums as a debt owed to the intestate under the provisions of G.S. 28-68. (1955, c. 1372, art. 18, s. 8; 1965, c. 395; 1981, c. 423, s. 1.)

Editor's Note. — Section 28-68, referred to in this section was transferred and renumbered to § 28A-25-6 by Session Laws 1973, c. 1329.

Part 3. Principal and Teacher Employment Contracts.

§ 115C-325. System of employment for public school teachers.

(a) **Definition of Terms.** — As used in this section unless the context requires otherwise:

- (1) "Career teacher" means a teacher who has obtained career status as provided in G.S. 115C-325(c).
- (2) "Committee" means the Professional Review Committee created under G.S. 115C-325(g).
- (3) "Day" means any day except Saturday, Sunday, or a legal holiday. In computing any period of time, the day in which notice is received is not counted, but the last day of the period so computed is to be counted.
- (4) "Demote" means to reduce the compensation of a person who is classified or paid by the State Board of Education as a classroom teacher, or to transfer him to a new position carrying a lower salary, or to suspend him without pay to a maximum of 30 days; provided, however, that a suspension without pay pursuant to the provisions of G.S. 115C-325(f) shall not be considered a demotion. The word "demote" does not include a reduction in compensation that results from the elimination of a special duty, such as the duty of an athletic coach, assistant principal, or a choral director.
- (5) "Probationary teacher" means a certificated person, other than a superintendent, associate superintendent, or assistant superintendent, who has not obtained career-teacher status and whose major responsibility is to teach or to supervise teaching.
- (6) "Teacher" means a person who holds at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction; whose major responsibility is to teach or directly supervise teaching or who is classified by the State Board of Education or is paid as a classroom teacher; and who is employed to fill a full-time, permanent position.

(b) The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher. The complaint, commendation, or sug-

gestion shall be signed by the person who makes it and shall be placed in the teacher's file only after five days' notice to the teacher. Any denial or explanation relating to such complaint, commendation, or suggestion that the teacher desires to make shall be placed in the file.

The personnel file shall be open for the teacher's inspection at all reasonable times but shall be open to other persons only in accordance with such rules and regulations as the board adopts. Any preemployment data or other information obtained about a teacher before his employment by the board may be kept in a file separate from his personnel file and need not be made available to him. No data placed in the preemployment file may be introduced as evidence at a hearing on the dismissal or demotion of a teacher.

- (c) (1) Election of a Teacher to Career Status. — When a teacher will have been employed by a North Carolina public school system for three consecutive years, the board, near the end of the third year, shall vote upon his employment for the next school year. The board shall give him written notice of that decision at least 30 days before the end of his third year of employment. If a majority of the board votes to reemploy him, he becomes a career teacher on the first day of the fourth year of employment. If the board votes to reemploy the teacher and thus grant career status at the beginning of the next school year, and if it has notified him of this decision, it may not later rescind that action but must proceed under the provisions of this section for the demotion or discharge of a teacher if it decides to terminate his employment. If a majority of the board votes against reemploying the teacher, he shall not teach beyond the current school term. If the board fails to vote on granting career status but reemploys him for the next year, he automatically becomes a career teacher on the first day of the fourth year of employment.

A year, for purposes of computing time as a probationary teacher, shall be not less than 120 workdays performed as a full-time, permanent teacher in a normal school year.

- (2) Employment of a Career Teacher. — A teacher who has obtained career status in another North Carolina public school system need not serve another probationary period of more than two years, and may, at the option of the board, be employed immediately as a career teacher. In any event, if the teacher is reemployed for a third consecutive year, he shall automatically become a career teacher. A teacher with career status who resigns and within five years seeks to be reemployed by the same local school administrative unit need not serve another probationary period of more than one year and may, at the option of the board, be reemployed as a career teacher. In any event, if he is reemployed for a second consecutive year, he shall automatically become a career teacher.
- (3) Ineligible for Career Status. — No superintendent, associate superintendent, assistant superintendent or other school employee who is not a teacher as defined by G.S. 115C-325(a)(6) is eligible to obtain career status or continue in a career status if he no longer performs the responsibilities of a teacher as defined in G.S. 115C-325(a)(9).
- (4) Leave of Absence. — A career teacher who has been granted a leave of absence by a board shall maintain his career status if he returns to his teaching position at the end of the authorized leave.
- (d) Career Teachers.
- (1) A career teacher shall not be subjected to the requirement of annual appointment nor shall he be dismissed, demoted, or employed on a part-time basis without his consent except as provided in subsection (e).

- (2) A career teacher who has performed the duties of a principal or supervisor in a particular position in the school system for three consecutive years shall not be transferred from that position to a lower-paying administrative position or to a lower-paying nonadministrative position without his consent except for the reasons given in G.S. 115C-325(e) and in accordance with the procedure for the dismissal of a career teacher set out in this section.
- (e) Grounds for Dismissal or Demotion of a Career Teacher.
- (1) No career teacher shall be dismissed or demoted or employed on a part-time basis except for one or more of the following:
- Inadequate performance.
 - Immorality.
 - Insubordination.
 - Neglect of duty.
 - Physical or mental incapacity.
 - Habitual or excessive use of alcohol or nonmedical use of a controlled substance as defined in Article 5 of Chapter 90 of the General Statutes.
 - Conviction of a felony or a crime involving moral turpitude.
 - Advocating the overthrow of the government of the United States or of the State of North Carolina by force, violence, or other unlawful means.
 - Failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of this State.
 - Failure to comply with such reasonable requirements as the board may prescribe.
 - Any cause which constitutes grounds for the revocation of such career teacher's teaching certificate.
 - A justifiable decrease in the number of positions due to district reorganization, decreased enrollment, or decreased funding, provided that there is compliance with subdivision (2).
 - Failure to maintain his certificate in a current status.
 - Failure to repay money owed to the State in accordance with the provisions of Article 60, Chapter 143 of the General Statutes.
- (2) When a career teacher is dismissed pursuant to G.S. 115C-325(e)(1) above, his name shall be placed on a list of available teachers to be maintained by the board. Career teachers whose names are placed on such a list shall have a priority on all positions for which they are qualified which become available in that system for the three consecutive years succeeding their dismissal. However, if the local school administrative unit offers the dismissed teacher a position for which he is certified and he refuses it, his name shall be removed from the priority list.
- (3) In determining whether the professional performance of a career teacher is adequate, consideration shall be given to regular and special evaluation reports prepared in accordance with the published policy of the employing local school administrative unit and to any published standards of performance which shall have been adopted by the board. Failure to notify a career teacher of an inadequacy in his performance shall be conclusive evidence of satisfactory performance.
- (4) Dismissal under subdivision (1) above, except paragraph g thereof, shall not be based on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher.
- (f) Suspension without Pay. — If a board believes that cause exists for dismissing a probationary or career teacher for any reason specified in G.S. 115C-325(e)(1)b through 115C-325(e)(1)h and that immediate suspension of

the teacher is necessary, the board may by resolution suspend him without pay and without giving notice and a hearing.

If a board thinks a probationary or career teacher's performance is so inadequate that an emergency situation exists requiring the teacher to be removed immediately from his duties, the board shall give him written notice that it plans to suspend him and the reasons for the planned action. Not less than two or more than five days after the teacher receives the board's notice, the board shall hold a hearing on whether it should suspend the teacher. The hearing procedures provided in G.S. 115C-325(j) shall be followed and all teacher evaluations and other information in the teacher's personnel file shall be made available to the board. If the board finds it necessary to suspend the teacher, it may by resolution suspend him without pay.

Within five days after a suspension under this section, the superintendent shall initiate a dismissal as provided in this section. If it is finally determined that no grounds for dismissal exist, the teacher shall be reinstated immediately and shall be paid for the period of suspension.

(f1) Suspension with Pay. — If a superintendent believes that cause may exist for dismissing or demoting a probationary or career teacher for any reasons specified in G.S. 115C-325(e)(1)b through 115C-325(e)(1)j, but that additional investigation of the facts is necessary and circumstances are such that the teacher should be removed immediately from his duties, the superintendent may suspend the teacher with pay for a reasonable period of time, not to exceed 90 days. The superintendent shall immediately notify the board of education of his action. If the superintendent has not initiated dismissal or demotion proceedings against the teacher within the 90-day period, the teacher shall be reinstated to his duties immediately and all records of the suspension with pay shall be removed from the teacher's personnel file at his request.

(g) Professional Review Committee; Qualifications; Terms; Vacancy; Training.

(1) There is hereby created a Professional Review Committee which shall consist of 121 citizens, 11 from each of the State's congressional districts, five of whom shall be lay persons and six of whom shall have been actively and continuously engaged in teaching or in supervision or administration of schools in this State for the five years preceding their appointment and who are broadly representative of the profession, to be appointed by the Superintendent of Public Instruction with the advice and consent of the State Board of Education. Each member shall be appointed for a term of three years. The Superintendent of Public Instruction, with the advice and consent of the State Board of Education, shall fill any vacancy which may occur in the Committee. The person appointed to fill the vacancy shall serve for the unexpired portion of the term of the member of the Committee whom he is appointed to replace.

(2) The Superintendent of Public Instruction shall provide for the Committee such training as he considers necessary or desirable for the purpose of enabling the members of the Committee to perform the functions required of them.

(3) The compensation of committee members while serving as a member of a hearing panel shall be as for State boards and commissions pursuant to G.S. 138-5. The compensation shall be paid by the State Board of Education.

(h) Procedure for Dismissal or Demotion of Career Teacher.

(1) A career teacher may not be dismissed, demoted, or reduced to part-time employment except upon the superintendent's recommendation.

- (2) Before recommending to a board the dismissal or demotion of the career teacher, the superintendent shall give written notice to the career teacher by certified mail of his intention to make such recommendation and shall set forth as part of his recommendation the grounds upon which he believes such dismissal is justified. The notice shall include a statement to the effect that if the teacher within 15 days after the date of receipt of the notice requests a review, he shall be entitled to have the proposed recommendations of the superintendent reviewed by a panel of the Committee. A copy of G.S. 115C-325 and a current list of the members of the Professional Review Committee shall also be sent to the career teacher. If the teacher does not request a panel hearing within the 15 days provided, the superintendent may submit his recommendation to the board.
- (3) Within the 15-day period after receipt of the notice, the career teacher may file with the superintendent a written request for either (i) a review of the superintendent's proposed recommendation by a panel of the Professional Review Committee or (ii) a hearing before the board within 10 days. If the teacher requests an immediate hearing before the board, he forfeits his right to a hearing by a panel of the Professional Review Committee. If no request is made within that period, the superintendent may file his recommendation with the board. The board, if it sees fit, may by resolution dismiss such teacher. If a request for review is made, the superintendent shall not file his recommendation for dismissal with the board until a report of a panel of the Committee is filed with the superintendent.
- (4) If a request for review is made, the superintendent, within five days of filing such request for review, shall notify the Superintendent of Public Instruction who, within seven days from the time of receipt of such notice, shall designate a panel of five members of the Committee, at least two of whom shall be lay persons, who shall not be employed in or be residents of the county in which the request for review is made, to review the proposed recommendations of the superintendent for the purpose of determining whether in its opinion the grounds for the recommendation are true and substantiated. The teacher or principal making the request for review shall have the right to require that at least two members of the panel shall be members of his professional peer group.
 - (i) Investigation by Panel of Professional Review Committee; Report; Action of Superintendent; Review by Board.
 - (1) The career teacher and superintendent will each have the right to designate not more than 30 of the 121 members of the Professional Review Committee as not acceptable to the teacher or superintendent respectively. No person so designated shall be appointed to the panel. The career teacher shall specify those Committee members who are not acceptable in his request for a review of the superintendent's proposed recommendations provided for in subdivision (h)(3) above. The superintendent's notice to the Superintendent of Public Instruction provided for in subdivision (h)(4) above shall contain a list of those members of the Committee not acceptable to the superintendent and the teacher respectively. Failure to designate nonacceptable members in accordance with this subsection shall constitute a waiver of that right.
 - (2) As soon as possible after the time of its designation, the panel shall elect a chairman and shall conduct such investigation as it may consider necessary for the purpose of determining whether the grounds for the recommendation are true and substantiated. The panel shall be furnished assistance reasonably required to conduct its investiga-

tion and shall empowered to subpoena and swear witnesses and to require them to give testimony and to produce books and papers relevant to its investigation.

(3) The career teacher and superintendent involved shall each have the right to meet with the panel accompanied by counsel or other person of his choice and to present any evidence and arguments which he considers pertinent to the considerations of the panel and to cross-examine witnesses.

(4) When the panel has completed its investigation, it shall prepare a written report and send it to the superintendent and teacher. The report shall contain an outline of the scope of its investigation and its finding as to whether or not the grounds for the recommendation of the superintendent are true and substantiated. The panel shall complete its investigation and prepare the report within 20 days from the time of its designation, except in cases in which the panel finds that justice requires that a greater time be spent in connection with the investigation and the preparation of such report, and reports that finding to the superintendent and the teacher: Provided, that such extension does not exceed 10 days.

(5) Within five days after the superintendent receives the report of the panel, he shall submit his written recommendation for dismissal to the board with a copy to the teacher, or shall drop the charges against the teacher. His recommendation shall state the grounds for the recommendation and shall be accompanied by a copy of the report of the panel of the Committee.

(6) Within seven days after receiving the superintendent's recommendation and before taking any formal action, the board shall notify the teacher by certified mail that it has received the superintendent's recommendation and the report of the panel. The notice shall state that if the teacher requests a hearing before the board on the superintendent's recommendation, a hearing will be provided at the time and place specified in the notice. The time specified shall not be sooner than seven or later than 20 days after the teacher received the notice. The notice shall further state that if the board does not receive the teacher's written notification that he wants a hearing before the board, such notice to be given within five days after he has received the board's notice, it may by resolution dismiss the teacher. If the teacher can show that his request for a hearing was postmarked within the time provided, his right to a hearing is not forfeited.

(j) Hearing Procedure. — The following provisions shall be applicable to any hearing conducted pursuant to G.S. 115C-325(k) or (l).

(1) The hearing shall be private.

(2) The hearing shall be conducted in accordance with such reasonable rules and regulations as the board may adopt consistent with G.S. 115C-325, or if no rules have been adopted, in accordance with reasonable rules and regulations adopted by the State Board of Education to govern such hearings.

(3) At the hearing the teacher and the superintendent shall have the right to be present and to be heard, to be represented by counsel and to present through witnesses any competent testimony relevant to the issue of whether grounds for dismissal or demotion exist or whether the procedures set forth in G.S. 115C-325 have been followed.

(k) Panel Finds Grounds for Superintendent's Recommendation True and Substantiated.

(1) If the panel found that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall consider the recommendation of the superintendent, the report

of the panel, including any minority report, and any evidence which the teacher or the superintendent may wish to present with respect to the question of whether the grounds for the recommendation are true and substantiated. The hearing may be conducted in an informal manner.

- (2) If, after considering the recommendation of the superintendent, the report of the panel and the evidence adduced at the hearing, the board concludes that the grounds for the recommendation are true and substantiated, the board, if it sees fit, may be resolution order such dismissal.

(l) Panel Does Not Find That the Grounds for Superintendent's Recommendation Are True and Substantiated.

- (1) If the panel does not find that the grounds for the recommendation of the superintendent are true and substantiated, at the hearing the board shall determine whether the grounds for the recommendation of the superintendent are true and substantiated upon the basis of competent evidence adduced at the hearing by witnesses who shall testify under oath or affirmation to be administered by any board member or the secretary of the board.
 - (2) The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant competent evidence to be received therein. The report of the panel of the committee shall be deemed to be competent evidence. A full record shall be kept of all evidence taken or offered at such hearing. Both counsel for the local school administrative unit and the career teacher or his counsel shall have the right to cross-examine witnesses.
 - (3) At the request of either the superintendent or the teacher, the board shall issue subpoenas requiring the production of papers or records or the attendance of persons residing within the State before the board. Subpoenas for witnesses to testify at the hearing in support of the recommendation of the superintendent or on behalf of the career teacher shall, as requested, be issued in blank by the board over the signature of its chairman or secretary. The board shall pay witness fees for up to five witnesses subpoenaed on behalf of the teacher, except that it shall not pay for any witness who resides within the county in which the dismissal originates or who is an employee of the board. However, no employee of the board shall suffer any loss of compensation because he has been subpoenaed to testify at the hearing. These payments shall be as provided for witnesses in G.S. 7A-314.
 - (4) At the conclusion of the hearing provided in this section, the board shall render its decision on the evidence submitted at such hearing and not otherwise.
 - (5) Within five days following the hearing, the board shall send a written copy of its findings and order to the teacher and superintendent. The board shall provide for making a transcript of its hearing. If the teacher contemplates an appeal to a court of law, he may request and shall receive at no charge a transcript of the proceedings.
- (m) Probationary Teacher.
- (1) The board of any local school administrative unit may not discharge a probationary teacher during the school year except for the reasons for and by the procedures by which a career teacher may be dismissed as set forth in subsections (e) and (h) to (l) above.
 - (2) The board, upon recommendation of the superintendent, may refuse to renew the contract of any probationary teacher or to reemploy any teacher who is not under contract for any cause it deems sufficient:

Provided, however, that the cause may not be arbitrary, capricious, discriminatory or for personal or political reasons.

(n) Appeal. — Any teacher who has been dismissed or demoted pursuant to subsection (k) or (l) shall have the right to appeal from the decision of the board to the superior court for the judicial district in which the teacher is employed. The appeal shall be filed within a period of 30 days after notification of the decision of the board. The cost of preparing the transcript shall be borne by the board.

(o) A teacher, career or probationary, should not resign without the consent of the superintendent unless he has given at least 30 days' notice. If the teacher does resign without giving at least 30 days' notice, the board may request that the State Board of Education revoke the teacher's certificate for the remainder of that school year. A copy of the request shall be placed in the teacher's personnel file.

A probationary teacher whose contract will not be renewed for the next school year shall be notified of this fact not less than 30 days before the end of his employment period.

(p) Notwithstanding any law or regulation to the contrary and the teacher salary schedule as adopted by the State Board of Education, this section shall apply to all persons defined as teachers by this section who serve as teachers in the following schools and institutions:

Cameron Morrison.

Samuel Leonard.

Richard T. Fountain.

Juvenile Evaluation Center.

C. A. Dillon.

Dobbs School for Girls.

Samarkand Manor.

Stonewall Jackson. (1955, c. 664; 1967, c. 223, s. 1; 1971, c. 883; c. 1188, s. 2; 1973, c. 315, s. 1; c. 782, ss. 1-30; 1979, c. 864, s. 2; 1981, c. 423, s. 1; c. 538, ss. 1-3; c. 731, s. 1; c. 1127, ss. 39, 40.)

Cross References. — As to duties of superintendent concerning staff, see § 115C-276. As to the compensation of principals in specific schools, see § 115C-285.

Effect of Amendments. — Session Laws 1981, c. 538, ss. 1-3, effective July 1, 1981, added at the end of the first sentence of subdivision (4) of subsection (a) the language beginning "or to suspend him without pay." The amendment also added a new subsection (g), and directed that the succeeding subsections of the section be relettered, and in subsection (o) (originally subsection (n)), substituted "subsection (l) or (m)" for "subsections (k) or (l)."

Session Laws 1981, c. 731, s. 1, effective July 1, 1981, deleted "or" preceding "decreased enrollment," inserted "or decreased funding" and substituted "there is compliance with subdivision (2)" for "subdivision (2) is complied with" in paragraph 1 of subdivision (e)(1).

Session Laws 1981, c. 1127, ss. 39, 40, desig-

nated the new subsection (g), added by the first 1981 amendment, as (f1), restored the original subsection designations of the succeeding subsections, and in subsection (n) (designated (o) by the 1981 amendment) substituted "subsection (k) or (l)" for "subsection (l) or (m)."

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

Legal Periodicals. — For survey of 1976 case law dealing with administrative law, see 55 N.C.L. Rev. 898 (1977).

For a survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

For an article entitled, "Teacher Renewal in North Carolina," see 14 Wake Forest L. Rev. 739 (1978).

For a comment on defining inadequate performance under the North Carolina Tenured Teacher Fair Dismissal Act, see 3 Campbell L. Rev. 77 (1981).

CASE NOTES

Editor's Note. — The annotations under this section are from cases decided under former § 115-142.

The regulations prescribing a teacher's speech and conduct are necessarily broad; they cannot possibly mention every specific kind of misconduct. The application of the regulations in each case depends on many factors, such as the age and sophistication of the students, the closeness of the relation between the specific technique used and some concededly valid educational objective, and the context and manner of presentation. *Frison v. Franklin County Bd. of Educ.*, 596 F.2d 1192 (4th Cir. 1979).

Rules of Civil Procedure Not Applicable. — The procedures prescribed by this section for the dismissal of a career teacher are essentially administrative rather than judicial. The board is not bound by the formal rules of evidence which would ordinarily obtain in a proceeding in a trial court. Nor are the rules of civil procedure applicable. *Baxter v. Poe*, 42 N.C. App. 404, 257 S.E.2d 71, cert. denied, 298 N.C. 293, 259 S.E.2d 298 (1979).

Latitude Permitted in Procedure and Reception of Evidence. — While a board of education conducting a hearing under this section must provide all essential elements of due process, it is permitted to operate under a more relaxed set of rules than is a court of law. Boards of education, normally composed in large part of nonlawyers, are vested general control and supervision of all matters pertaining to the public schools in their respective administrative units, a responsibility differing greatly from that of a court. The carrying out of such a responsibility requires a wider latitude in procedure and in the reception of evidence than is allowed a court. *Baxter v. Poe*, 42 N.C. App. 404, 257 S.E.2d 71, cert. denied, 298 N.C. 293, 259 S.E.2d 298 (1979).

Evidence of Events More Than Three Years Past Permissible. — While this section prohibits a board of education from basing dismissal "on conduct or actions which occurred more than three years before the written notice of the superintendent's intention to recommend dismissal is mailed to the teacher," there is no prohibition against the board hearing evidence of events which occurred more than three years before the hearing. *Baxter v. Poe*, 42 N.C. App.

404, 257 S.E.2d 71, cert. denied, 298 N.C. 293, 259 S.E.2d 298 (1979).

Nothing in subdivision (m)(2) obligates the board to rehire or to advance a probationary teacher to career status when principal's adverse reports have not been disclosed. *Sigmon v. Poe*, 564 F.2d 1093 (4th Cir. 1977).

Subdivision (m)(2) Does Not Establish Property Interest under Fourteenth Amendment. — While subdivision (m)(2) of this section may create a right of action in the State courts, it does not establish a property interest under the Fourteenth Amendment. *Sigmon v. Poe*, 564 F.2d 1093 (4th Cir. 1977).

While subdivision (m)(2) of this section is phrased in part in language sometimes used in connection with due process or equal protection rights, the two should not be confused. *Sigmon v. Poe*, 564 F.2d 1093 (4th Cir. 1977).

Judicial Review Provided by Subsection (n) Is Part of Statutory Grievance Procedure. — Since the judicial review provided by subsection (n) of this section is part of a statutory grievance procedure, it should not be conducted in a federal court under the doctrine of pendent jurisdiction. *Frison v. Franklin County Bd. of Educ.*, 596 F.2d 1192 (4th Cir. 1979).

Failure to Rehire Based on Teacher's Refusal to Sign Document. — A failure to rehire a probationary teacher who would have become a career teacher upon the removal of his contract, based solely on the teacher's refusal to sign a document which to a layman might easily appear damaging, though it in fact has no practical effect, may be an arbitrary and capricious cause for not hiring the teacher in violation of subdivision (m)(2) of this section. *Hasty v. Bellamy*, 44 N.C. App. 15, 260 S.E.2d 135 (1979).

Superintendent's Recommendation against Rehiring Not Violative of Subdivision (m)(2). — A school board's failure to renew a probationary teacher's contract because the principal and superintendent recommended that he not be rehired would not be arbitrary, capricious, or for personal reasons, in violation of subdivision (m)(2) of this section, since the superintendent is entitled to make such recommendations. *Hasty v. Bellamy*, 44 N.C. App. 15, 260 S.E.2d 135 (1979).

§ 115C-326. Uniform performance standards and criteria for professional employees.

The State Board of Education, in consultation with local boards of education, shall develop uniform performance standards and criteria to be used in evaluating professional public school employees. It shall develop rules and

regulations to insure the use of these standards and criteria in the employee evaluation process. The performance standards and criteria shall be adopted by the Board by July 1, 1982, and may be modified in the discretion of the Board.

Local boards of education shall adopt rules and regulations by July 1, 1982, to provide for annual evaluation of all professional employees defined as teachers by G.S. 115C-325(a)(6). Local boards may also adopt rules and regulations requiring annual evaluation of other school employees not specifically covered in this section. All such rules and regulations adopted by local boards shall utilize performance standards and criteria adopted by the State Board of Education pursuant to the first paragraph of this section; however, the standards and criteria used by local boards are not to be limited by those adopted by the State Board of Education. (1979, 2nd Sess., c. 1137, s. 35; 1981, c. 423, s. 1; c. 859, s. 29.12.)

Effect of Amendments. — Session Laws 1981, c. 859, s. 29.12, effective July 1, 1981, substituted "1982" for "1981" in two places.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

Session Laws 1981, c. 859, s. 29.12, as amended by Session Laws 1981, c. 1127, s. 41, provides: "By allowing for the delay and implementation of this section, the General Assem-

bly intends to allow time for testing the standards and criteria in up to 24 local school administrative units and for proper and necessary training of personnel involved in the implementation. It is also the legislative intent that standards and criteria utilized in the initial programs include the use of tests scores of teachers as one of many possible measures of performance."

Part. 4. Personnel Administration Commission for Public School Employees.

§ 115C-327. Commission established; purpose.

There is hereby established a Personnel Administration Commission for Public School Employees which shall provide advice and recommendations to the Governor and the State Board of Education in regard to personnel administration practices and policies for public school employees. (1979, 2nd Sess., c. 1236; 1981, c. 423, s. 1.)

§ 115C-328. Commission membership; meetings; compensation.

(a) The Personnel Administration Commission for Public School Employees shall consist of nine members to be appointed by the Governor on or before September 1, 1980. Of the nine members of the Commission, one shall be appointed from each of the eight educational districts of the State as established in G.S. 115C-65, and the chairman, who shall be designated by the Governor, shall be an at-large member. To assure continuity of membership, initial appointments to the Commission shall be made as follows: three members, including the chairman, for terms of three years; three members for terms of two years; and three members for terms of one year. All appointments after the initial appointments shall be for terms of three years. Vacancies on the Commission shall be filled by the Governor for the unexpired term.

(b) In making his appointments to the Commission, the Governor shall assure that the membership of the Commission consists of persons interested in education and persons possessing knowledge and skills in personnel administration. However, no person shall be eligible for appointment to the Commission if he is a member of the General Assembly, officer or employee of any organization or association of public school employees, or a person whose employment would be directly affected by recommendations of the Commission.

(c) Within 30 days after the appointment of the Commission, the chairman shall convene the Commission for an initial meeting. At this meeting, the Commission shall elect such officers, in addition to the chairman, as it deems necessary and establish a regular meeting schedule.

(d) Members of the Commission shall be entitled to receive per diem and reimbursement for travel and subsistence expenses incurred in the performance of their duties as specified in G.S. 138-5 or 138-6, whichever is applicable to the individual member. Funds for this purpose shall be made available to the State Board of Education from funds appropriated to implement Section 36 of Chapter 1137 of the 1980 Session Laws. (1979, 2nd Sess., c. 1236; 1981, c. 423, s. 1.)

§ 115C-329. Responsibilities of the Commission.

(a) The primary function of the Commission shall be to review the classification of positions and to make written recommendations to the Governor and the State Board of Education concerning proper compensation, salary and benefits, and such other proper personnel matters as to encourage the development of employees with a high degree of necessary skills and to stimulate a high degree of employee morale. In addition, the Commission shall provide advice and make recommendations to the Governor and the State Board of Education in such other areas of personnel management as may be requested by either the Governor or the State Board.

(b) The State Board of Education is authorized and directed to receive periodic reports and recommendations from the Commission. The State Board of Education is not empowered to implement recommendations of the Commission without an appropriation from the General Assembly for this express purpose.

(c) The State Board of Education and the Superintendent of Public Instruction shall provide necessary staff services to the Commission in the performance of its responsibilities. (1979, 2nd Sess., c. 1236; 1981, c. 423, s. 1; c. 859, s. 29.1.)

Effect of Amendments. — Session Laws 1981, c. 859, s. 29.1, effective July 1, 1981, deleted "and is empowered to implement recommendations of the Commission" from the end of

the first sentence of subsection (b), and added the second sentence of subsection (b).

Session Laws 1981, c. 859, s. 97, contains a severability clause.

Part 5. Employment of Handicapped.

§ 115C-330. Employment of handicapped.

The Board and each local educational agency shall make positive efforts to employ and advance in employment qualified handicapped individuals. (1977, c. 927, s. 1; 1981, c. 423, s. 1.)

§§ 115C-331 to 115C-335: Reserved for future codification purposes.

ARTICLE 23.

*Employment Benefits.***§ 115C-336. Sick leave.**

All public school employees shall be permitted a minimum of five days per school term of sick leave, pursuant to rules and regulations promulgated by the State Board of Education as provided in G.S. 115C-12(8). (1981, c. 423, s. 1.)

§ 115C-337. Workers' compensation for school employees.

(a) Workers' Compensation Act Applicable to School Employees. — The provisions of the Workers' Compensation Act shall be applicable to all school employees, and the State Board of Education shall make such arrangements as necessary to carry out the provisions of the Workers' Compensation Act applicable to such employees paid from State school funds. Liability of the State for compensation shall be confined to school employees paid by the State from State school funds for injuries or death caused by accident arising out of and in the course of their employment in connection with the State-operated school term. The State shall be liable for said compensation on the basis of the average weekly wage of such employees as defined in the Workers' Compensation Act, whether all of said compensation for the school term is paid from State funds or in part supplemented by local funds. The State shall also be liable for workers' compensation for all school employees employed in connection with the teaching of vocational agriculture, home economics, trades and industries, and other vocational subjects, supported in part by State and federal funds, which liability shall cover the entire period of service of such employees. The local school administrative units shall be liable for workers' compensation for school employees, including lunchroom employees, whose salaries or wages are paid by such local units from local or special funds. Such local units are authorized and empowered to provide insurance to cover such compensation liability and to include the cost of such insurance in their annual budgets.

The provisions of this subsection shall not apply to any person, firm or corporation making voluntary contributions to schools for any purpose, and such person, firm, or corporation shall not be liable for the payment of any sum of money under this Chapter.

(b) Payment of Awards to School Bus Drivers Pursuant to the Workers' Compensation Act. — In the event that the Industrial Commission shall make an award pursuant to the Workers' Compensation Act against any local board of education on account of injuries to or the death of a school bus driver arising out of and in the course of his employment as such driver, the local board of education shall draw a requisition upon the State Board of Education for the amount required to pay such award. The State Board of Education shall honor such requisition to the extent that it shall have in its hands, or subject to its control, available funds which have been or shall thereafter be appropriated by the General Assembly for the support of the school term. It shall be the duty of the local board of education to apply all funds received by it from the State Board of Education pursuant to such requisition to the payment of such award. Neither the State nor the State Board of Education shall be deemed the employer of such school bus driver, nor shall the State or the State Board of Education be liable to any school bus driver or any other person for the payment of any claim, award, or judgment under the provisions of the Workers' Compensation Act or of any other law of this State for any injury or death arising out of or in the course of the operation by such driver of a public school bus. Neither the local board of education, the local school administrative unit,

nor the tax levying authorities for the local school administrative unit shall be liable for the payment of any award made pursuant to the provisions of this subsection in excess of the amount paid upon such requisition by the State Board of Education, nor shall the local school board of education, the local school administrative unit, nor the said tax levying authorities be required to provide or carry workers' compensation insurance for such purpose. (1955, c. 1292; c. 1372, art. 18, s. 9; 1979, c. 714, s. 2; 1981, c. 423, s. 1.)

Cross References. — As to school bus drivers, see § 115C-256.

§ 115C-338. Salaries for employees injured during an episode of violence.

(a) For the purpose of this section, "employee" shall mean any teacher, helping teacher, librarian, principal, supervisor, superintendent of public schools or any full-time employee, city or county, superintendent of public instruction, or any full-time employee of Department of Public Instruction, president, dean or teacher, or any full-time employee in any educational institution supported by and under the control of the State: Provided, that the term "teacher" shall not include any part-time, temporary, or substitute teacher or employee, and shall not include those participating in an optional retirement program provided for in G.S. 135-5.1. In all cases of doubt, the Board of Trustees, as defined in G.S. 135-1(7), shall determine whether any person is a teacher as herein defined.

(b) Any employee who while engaged in the course of his employment or in any activities incidental thereto, suffers any injury or disability resulting from or arising out of any episode of violence by one or more persons shall be entitled to receive his full salary during the shortest of these periods: one year, the continuation of his disability, or the time during which he is unable to engage in his employment because of injury. An episode of violence shall be defined to mean but shall not be limited to any acts of violence directed toward any school building or facility, or to any employee or any student by any person including but not limited to another student. These benefits shall be in lieu of all other income or disability benefits payable under workers' compensation to such employee only during the period prescribed herein. Thereafter, such teacher shall be paid such income or disability payments to which he might be entitled under workers' compensation. If the employment of a substitute is necessitated by the disability of the injured employee the salary of such substitute shall be paid from the same source of funds from which the employee is paid. This section shall in no way limit the right of the injured employee to receive the benefits of medical, hospital, drug and related expense payments from any source, including workers' compensation: Provided, further, that this section shall not apply to any employee who is injured while he participates in or provokes such episode of violence except as is incident to the maintenance or restoration of order or classroom discipline or to defend himself: Provided, further, that this section shall be given liberal construction and interpretation as to any and all definitions, conditions, and factual circumstances set forth herein.

(c) Any employee claiming the benefits of this section shall file claim with the board of education employing such employee within one year after the occurrence giving rise to his alleged injury. That board of education shall, within 30 days after receipt of such claim, decide whether and to what extent that employee is entitled to the benefits of this section and shall forthwith transmit its decision in writing to such employee. That employee shall, how-

ever, have the right to appeal the decision of that board of education to the North Carolina Industrial Commission by serving that board of education and the North Carolina Industrial Commission with written notice thereof within 30 days after receipt of the board's written decision. In determining all appeals under this section the North Carolina Industrial Commission shall constitute a court for the purpose of hearing de novo and passing upon all claims thereby presented in accordance with procedures utilized by the Commission in determining claims under the Workers' Compensation Act. The decision of the Industrial Commission in each instance shall be subject to appeal to the North Carolina Court of Appeals as provided in G.S. 143-293 and 143-294. (1971, c. 640, ss. 1, 2; 1973, c. 753; 1979, c. 714, s. 2; 1981, c. 423, s. 1.)

§ 115C-339. Retirement plan.

Provisions for retirement plans for public school employees may be found in Chapter 135 of the General Statutes. (1981, c. 423, s. 1.)

§ 115C-340. Health insurance.

(a) The State Board of Education may authorize and empower any local board of education, the board of trustees of any community college or technical institute, or other governing authority, within the State, to establish a voluntary payroll deduction plan for premiums for any type of group insurance, including health insurance, established and authorized by the laws of this State.

(b) Any employee of any local board of education, any community college, technical institute, or of any educational association, may enter into a written agreement with his employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section. (1969, c. 591; 1981, c. 423, s. 1.)

§ 115C-341. Annuity contracts.

Notwithstanding the provisions of this Chapter for the adoption of State and local salary schedules for the pay of teachers, principals, superintendents, and other school employees, local boards of education may enter into annual contracts with any employee of such board which provide for a reduction in salary below the total established compensation or salary schedule for a term of one year. The local board of education shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity contract. Funds used by the local boards of education for the purchase of an annuity contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective.

The agreement for salary reductions referred to herein shall be effected under any necessary regulations and procedures adopted by the State Board of Education and on forms prepared by the State Board of Education.

Notwithstanding any other provisions of this section, the amount by which the salary of any employee is reduced pursuant to this section shall be included in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1963, c. 582; 1981, c. 423, s. 1.)

§ 115C-342. Group insurance and credit unions.

(a) The State Board of Education may authorize and empower any local board of education, the board of trustees of any community college or technical institute, or other governing authority, within the State, to establish a voluntary payroll deduction plan for:

- (1) Premiums for any type of group insurance established and authorized by the laws of this State.
- (2) Amounts authorized by members of the State Employees' Credit Union or any local teachers' credit unions to be deposited with such organizations.
- (3) Loans made to teachers by credit unions.

(b) Any employee of any local board of education, any community college, technical institute, or of any educational association, may enter into a written agreement with his employer for the purpose of carrying out the provisions of this section. The State Board of Education is authorized and empowered to make and promulgate rules and regulations to carry out the purposes of this section.

(c) Any public school teacher who is a member of a credit union organized and established under Chapter 54 of the General Statutes may, by executing a written consent to the local school administrative unit by whom employed, authorize periodical payment or obligation to such credit union to be deducted from their salaries or wages, and such deductions shall be made and paid to said credit union as and when said salaries and wages are payable. (1969, c. 591; 1981, c. 423, s. 1.)

§ 115C-343. Payroll savings plan for purchase of United States bonds.

(a) The State Board of Education may authorize any local school administrative school unit within the State to establish a voluntary payroll deduction plan for the purchase of United States Savings Bonds by the employees of such local school administrative unit, and to set up the necessary machinery for carrying out the purposes of this section.

(b) Any employee of any local school administrative school unit within the State may enter into a written agreement with the local board of education by which he is employed and which has adopted such payroll savings plan to authorize deductions from his salary of certain designated sums to be invested in United States Savings Bonds of the kind and type specified in such agreement.

(c) Upon execution of such agreement by an employee of any local school administrative unit the local board of education employing such person is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in the weekly or monthly salary of such employee and to show deductions on all payrolls in a manner similar to that in which withholding tax and retirement are shown. Such sums shall be deposited monthly with a depository authorized by the United States Treasury Department. The sums so deposited shall be held by the depository until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sums shall be invested in United States Savings Bonds for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practicable: Provided, that no coercion shall be exercised to require any person to participate in such plan.

(d) Such agreement may be canceled by the employee executing the same by giving written notice to the superintendent of schools who is ex officio secretary to the local board of education, not later than the fifteenth day of the month

in which he desires such agreement to be terminated; and the local board of education may cancel any agreement herein provided for upon giving 10 days written notice to the affected employee. Upon the termination of the agreement, the depository is hereby authorized and directed to refund any amount of money held for such employee. (1957, c. 751, ss. 1-4; 1981, c. 423, s. 1.)

§§ 115C-344 to 115C-348: Reserved for future codification purposes.

ARTICLE 24.

Interstate Agreement on Qualifications of Educational Personnel.

§ 115C-349. Purpose, findings, and policy.

(a) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

(b) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this Compact can increase the availability of educational manpower. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-350. Definitions.

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

- (1) "Accept" or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.
- (2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.
- (3) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

- (4) "Originating state" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools, is acceptable in accordance with the terms of a contract made pursuant to G.S. 115C-351.
- (5) "Receiving state" means a state (and the subdivisions thereof) which accepts educational personnel in accordance with the terms of a contract made pursuant to G.S. 115C-351.
- (6) "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-351. Interstate educational personnel contracts.

(a) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this section only with states in which he finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his own state.

(b) Any such contract shall provide for:

- (1) Its duration.
- (2) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.
- (3) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.
- (4) Any other necessary matters.

(c) No contract made pursuant to this agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

(d) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(e) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(f) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-352. Approved and accepted programs.

(a) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(b) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-353. Interstate cooperation.

The party states agree that:

- (1) They will, so far as practicable, prefer the making of multilateral contracts pursuant to G.S. 115C-351 of this agreement.
- (2) They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-354. Agreement evaluation.

The designated state officials of any party state(s) may meet from time to time as a group to evaluate progress under the agreement, and to formulate recommendations for changes. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-355. Other arrangements.

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-356. Effect and withdrawal.

(a) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(b) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(c) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-357. Construction and severability.

This agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this

agreement shall be held contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters. (1969, c. 631, s. 1; 1981, c. 423, s. 1.)

§ 115C-358. Designated state official.

For the purposes of the agreement set forth in this Article the "designated state official" for this State shall be the Superintendent of Public Instruction. He shall enter into contracts pursuant to G.S. 115C-351 only with the approval of the specific text thereof by the State Board of Education. (1969, c. 631, s. 2; 1981, c. 423, s. 1.)

§§ 115C-359 to 115C-363: Reserved for future codification purposes.

SUBCHAPTER VI. STUDENTS.

ARTICLE 25.

Admission and Assignment of Students.

§ 115C-364. Admission requirements.

Children to be entitled to enrollment in the public schools must have passed the sixth anniversary of their birth before October 1 of the year in which they enroll, and must enroll during the first month of the school year: Provided, that if a particular child has already been attending school in another state in accordance with the laws or regulations of the school authorities of such state before moving to and becoming a resident of North Carolina, such child will be eligible for enrollment in the schools of this State regardless of whether such child has passed the sixth anniversary of his birth before October 1. The State Board of Education is hereby authorized and empowered, in its discretion, to change the above dates of October 1. The principal of any public school shall have the authority to require the parents of any child presented for admission for the first time to such school to furnish a certified copy of the birth certificate of such child, which shall be furnished without charge by the register of deeds of the county having on file the record of the birth of such child, or other satisfactory evidence of date of birth. (1955, c. 1372, art. 19, s. 2; 1969, c. 1213, s. 4; 1973, c. 603, s. 3; 1981, c. 423, s. 1.)

§ 115C-365. Children at orphanages admitted to public schools.

Children living in and cared for and supported by an institution established or incorporated for the purpose of rearing and caring for orphan children shall be considered legal residents of the local school administrative unit in which the institution is located, and a part or all of said orphan children shall be permitted to attend the public schools of their local school administrative unit: Provided, that the provisions of this section shall be permissive only, and shall not be mandatory. (1955, c. 1372, art. 19, s. 4; 1981, c. 423, s. 1.)

§ 115C-366. Assignment of student to a particular school.

(a) All pupils domiciled in a school district or attendance area, who have not been removed from school for cause, shall be entitled to all the privileges and advantages of the public schools of such district or attendance area in such school buildings to which they are assigned by local boards of education: Provided, that wherever pupils from nontax units, districts, or attendance areas, are assigned to a school in a tax unit, district, or attendance area, the assignment shall be for only the current school year, unless satisfactory agreements are reached between all units, districts, or attendance areas concerned: Provided, further, that pupils domiciled in one local school administrative unit may be assigned to a school located in another local school administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the local school administrative units involved and entered upon the official records of such boards: Provided, further, that the assignment of pupils living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which said pupils are assigned to levy and collect any supplemental tax heretofore or hereafter voted in such local school administrative unit or district: Provided, further, the boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

Unless otherwise assigned by the local board of education, the following pupils are entitled to attend the schools in the district or attendance area in which they are domiciled: Provided, the superintendent, or the principal with the approval of the superintendent, of the local school administrative unit may, in his discretion, prohibit the enrollment of or remove from school any pupil who has attained the age of 21 years:

- (1) All persons of the district or attendance area who have not completed the prescribed course for graduation in the high school.
- (2) All pupils whose parents have recently moved into the unit, district, or attendance area for the purpose of making their legal domicile in the same.
- (3) Any pupil living with either father, mother or guardian who has made his permanent home within the district.

(b) Each local board of education is hereby authorized and directed to provide for the assignment to a public school of each child residing within the local school administrative unit who is qualified under the laws of this State for admission to a public school. Except as otherwise provided in G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final. A child residing in one local school administrative unit may be assigned either with or without the payment of tuition to a public school located in another local school administrative unit upon such terms and conditions as may be agreed in writing between the boards of education of the local school administrative units involved and entered upon the official records of such boards. No child shall be enrolled in or permitted to attend any public school other than the public school to which the child has been assigned by the appropriate board of education. In exercising the authority conferred by this subsection, each local board of education shall make assignments of pupils to public schools so as to provide for the orderly and efficient administration of the public schools, and provide for the effective instruction, health, safety, and general welfare of the pupils. Each board of education may adopt such reason-

able rules and regulations as in the opinion of the board are necessary in the administration of G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116. (1955, c. 366, s. 1; c. 1372, art. 19, s. 3; 1956, Ex. Sess., c. 7, s. 1; 1971, c. 153; 1981, c. 423, s. 1; c. 567, s. 1.)

Cross References. — As to entitlement to privileges of assigned school district, see § 115C-70. As to effect of consolidation of districts or discontinuance of schools, see § 115C-72.

As to eligibility for admission to summer school, see § 115C-233.

Effect of Amendments. — Session Laws 1981 c. 567, substituted "domiciled" for

"residing" in the first sentence and in the second proviso of subsection (a), deleted "either with or without the payment of tuition" following "assigned" in the second proviso and preceding "shall have" in the third proviso, substituted "are domiciled" for "reside" in the first sentence of the second paragraph of subsection (a) and substituted "domicile" for "residence" in subdivision (a)(2).

§ 115C-366.1. Local boards of education; tuition charges.

- (a) Local boards of education shall charge tuition to the following persons:
 - (1) Persons of school age who are not domiciliaries of the State.
 - (2) Persons of school age who are domiciliaries of the State but who do not reside within the school administrative unit or district.
 - (3) Persons of school age who reside on a military or naval reservation located within the State and who are not domiciliaries of the State. Provided, however, that no person of school age residing on a military or naval reservation located within the State and who attends the public schools within the State may be charged tuition if federal funds designed to compensate for the impact on public schools of military dependent persons of school age are funded by the federal government at not less than fifty percent (50%) of the total per capita cost of education in the State, exclusive of capital outlay and debt service, for elementary or secondary pupils, as the case may be, of such school administrative unit.
- (b) If the tuition charge for a student exceeds the amount of per capita local funding, that excess shall be remitted to the State Board of Education.
- (c) The tuition required in this section shall be determined by local boards of education each August 1 prior to the beginning of a new school year. (1981, c. 567, ss. 2-4.)

Editor's Note. — This section was enacted effective July 1, 1981, pursuant to Session Laws as § 115-163.1 and recodified as § 115C-366.1, 1981, c. 567, ss. 4 and 5.

§ 115C-366.2. Applicability to certain persons.

For the purposes of G.S. 115C-366 and 115C-366.1 for any person who is a resident of a place which is not the person's place of domicile, either because: (i) of the residence of a parent or guardian who is a student, employee or faculty member, of a college or university, or a visiting scholar at the National Humanities Center; or (ii) the child is placed in or assigned to a group home, foster home, or other similar facility or institution, other than a child covered by G.S. 115C-140.1 (a) those sections shall be applied by substituting the word "residing" for the word "domiciled," by substituting the word "residence" for the word "domicile," and by substituting the word "residents" for the word "domiciliaries."

This act shall not be construed to affect the ability of any person to acquire a new domicile. (1981, c. 965.)

§ 115C-367. Assignment on certain bases prohibited.

No person shall be refused admission to or be excluded from any public school in this State on account of race, creed, color or national origin. No school attendance district or zone shall be drawn for the purpose of segregating persons of various races, creeds, colors or national origins from the community.

Where local school administrative units have divided the geographic area into attendance districts or zones, pupils shall be assigned to schools within such attendance districts: Provided, however, that the board of education of a local school administrative unit may assign any pupil to a school outside of such attendance district or zone in order that such pupil may attend a school of a specialized kind including but not limited to a vocational school or school operated for, or operating programs for, pupils mentally or physically handicapped, or for any other reason which the board of education in its sole discretion deems sufficient.

The provisions of G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116 shall not apply to a temporary assignment due to the unsuitability of a school for its intended purpose nor to any assignment or transfer necessitated by overcrowded conditions or other circumstances which, in the sole discretion of the school board, require assignment or reassignment.

The provisions of G.S. 115C-366(b), 115C-367 to 115C-370 and 115C-116 shall not apply to an application for the assignment or reassignment by the parent, guardian or person standing in loco parentis of any pupil or to any assignment made pursuant to a choice made by any pupil who is eligible to make such choice pursuant to the provisions of a freedom of choice plan voluntarily adopted by the board of education of a local school administrative unit. (1969, c. 1274; 1981, c. 423, s. 1.)

Cross References. — As to eligibility for admission to summer school, see § 115C-233.

§ 115C-368. Notice of assignment.

In exercising the authority conferred by G.S. 115C-366(b), each local board of education may, in making assignments of pupils, give individual written notice of assignment, on each pupil's report card or by written notice by any other feasible means, to the parent or guardian of each child or the person standing in loco parentis to the child, or may give notice of assignment of groups or categories of pupils by publication at least two times in some newspaper having general circulation in the local administrative unit. (1955, c. 366, s. 2; 1956, Ex. Sess., c. 7, s. 2; 1981, c. 423, s. 1.)

§ 115C-369. Application for reassignment; notice of disapproval; hearing before board.

The parent or guardian of any child, or the person standing in loco parentis to any child, who is dissatisfied with the assignment made by a local board of education may, within 10 days after notification of the assignment, or the last publication thereof, apply in writing to the local board of education for the reassignment of the child to a different public school. Application for reassignment shall be made on forms prescribed by the local board of education pursuant to rules and regulations adopted by the board of education. If the application for reassignment is disapproved, the local board of education shall give notice to the applicant by registered mail, and the applicant may within five days after receipt of such notice apply to the local board for a hearing, and shall be entitled to a prompt and fair hearing on the question of reassignment

of such child to a different school. A majority of the local board shall be a quorum for the purpose of holding such hearing and passing upon application for reassignment, and the decision of a majority of the members present at the hearing shall be the decision of the board. If, at the hearing, the local board shall find that the child is entitled to be reassigned to such school, or if the local board shall find that the reassignment of the child to such school will be for the best interests of the child, and will not interfere with the proper administration of the school, or with the proper instruction of the pupils there enrolled, and will not endanger the health or safety of the children there enrolled, the local board shall direct that the child be reassigned to and admitted to such school. The local board shall render prompt decision upon the hearing, and notice of the decision shall be given to the applicant by registered mail. (1955, c. 366, s. 3; 1956, Ex. Sess., c. 7, s. 3; 1981, c. 423, s. 1.)

§ 115C-370. Appeal from board's decision.

A final decision of the local board of education pursuant to G.S. 115C-369 shall be subject to judicial review in the manner provided by Article 4, Chapter 150A of the General Statutes: Provided, notwithstanding the provisions of G.S. 150A-45, a person seeking judicial review under this section shall not appeal the final decision of the local board of education to any State board, but shall file a petition for review in the superior court of the county where the final decision of the local board of education was made. If the court determines that the final decision of the local board of education should be set aside, then the court, notwithstanding the provisions of G.S. 150A-51, may enter an order so providing and adjudging that such child is entitled to attend the school as claimed by the appellant, or such other school as the court may find such child is entitled to attend, and in such case such child shall be admitted to such school by the local board of education concerned. (1955, c. 366, s. 4; 1969, c. 44, s. 73; 1981, c. 423, s. 1.)

§ 115C-371. Assignment to special education programs.

Assignment of students to special education programs is subject to the provisions of G.S. 115C-116. (1981, c. 423, s. 1.)

§ 115C-372. Assignment to school bus.

Assignment of students to school buses is subject to the provisions of G.S. 115C-244. (1981, c. 423, s. 1.)

§§ 115C-373 to 115C-377: Reserved for future codification purposes.

ARTICLE 26.

Attendance.

Part 1. Compulsory Attendance.

§ 115C-378. Children between seven and 16 required to attend.

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session. No person shall

encourage, entice or counsel any such child to be unlawfully absent from school.

The principal, superintendent, or teacher who is in charge of such school shall have the right to excuse a child temporarily from attendance on account of sickness or other unavoidable cause which does not constitute unlawful absence as defined by the State Board of Education. The term "school" as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term.

The principal shall notify the parent, guardian, or custodian of his child's excessive number of absences from school after his child has five consecutive or 10 accumulated absences whichever occurs first, unless the principal is satisfied that these absences are excused under the established attendance policies of the local board. Once the parents are notified, the school attendance counselor shall work with the child and his family to analyze the causes of the absences and determine steps, including adjustment of the school program or obtaining supplemental services, to eliminate the problem. The attendance counselor may request that a law enforcement officer accompany him if he believes that a home visit is necessary.

Notification of a parent shall be in writing and shall state that the parent may be prosecuted under Part 1 of this Article if these absences cannot be justified under the established attendance policies of the local school board. The principal shall notify the prosecutor after 30 accumulated absences, unless he has notified the prosecutor sooner. Evidence that shows that the parents, guardian, or custodian were notified and that the child has accumulated 30 absences which cannot be justified under the established attendance policies of the local board shall establish a prima facie case that the child's parent, guardian, or custodian is responsible for the absences. (1955, c. 1372, art. 20, s. 1; 1956, Ex. Sess., c. 5; 1963, c. 1223, s. 6; 1969, c. 339; c. 799, s. 1; 1971, c. 846; 1975, c. 678, s. 2; c. 731, s. 3; 1979, c. 847; 1981, c. 423, s. 1.)

CASE NOTES

Editor's Note. — The annotations under this section are from cases decided under former § 115-166.

Property Interest Entitles Students to Due Process. — Students in North Carolina have legitimate claims of entitlement to a public education, since by § 115-1 [see now § 115C-1], a uniform system of free public schools is provided throughout the state and students are required to attend by this section. Therefore, students have a property interest in public education and would be entitled to due process in connection with suspension from school. *Pegram v. Nelson*, 469 F. Supp. 1134 (M.D.N.C. 1979).

This section does not compel every child to attend public schools exclusively for the prescribed period. Such a law would be invalid. *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298, rev'd on other grounds, 297 N.C. 8, 252 S.E.2d 732 (1979).

Willfulness is not contained in this section as an element of the offense. *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298, rev'd on other grounds, 297 N.C. 8, 252 S.E.2d 732 (1979).

Competence of Testimony of Public School Officials. — In a prosecution based on this section public school officials were competent to testify as to whether or not the school

in which the defendant's daughter was placed was an "approved" nonpublic school. *State v. Vietto*, 38 N.C. App. 99, 247 S.E.2d 298, rev'd on other grounds, 297 N.C. 8, 252 S.E.2d 732 (1979).

Evidence Insufficient to Show School Not Approved. — Defendant's motion for directed verdict should have been allowed in a prosecution for violating this section, where the evi-

dence showed that defendant removed her twelve-year-old child from the public schools and enrolled her in Learning Foundations of Wilmington, and the only evidence that Learning Foundations was not a nonpublic school approved by the State Board of Education was inherently speculative. *State v. Vietto*, 297 N.C. 8, 252 S.E.2d 732 (1979).

§ 115C-379. Method of enforcement.

It shall be the duty of the State Board of Education to formulate such rules and regulations as may be necessary for the proper enforcement of the provisions of this Part. The Board shall prescribe what shall constitute unlawful absence, what causes may constitute legitimate excuses for temporary nonattendance due to physical or mental inability to attend, and under what circumstances teachers, principals, or superintendents may excuse pupils for nonattendance due to immediate demands of the farm or the home in certain seasons of the year in the several sections of the State. It shall be the duty of all school officials to carry out such instructions from the State Board of Education, and any school official failing to carry out such instructions shall be guilty of a misdemeanor: Provided, that the compulsory attendance law herein prescribed shall not be in force in any local school administrative unit that has a higher compulsory attendance feature than that provided herein. (1955, c. 1372, art. 20, s. 2; 1963, c. 1223, s. 7; 1981, c. 423, s. 1.)

§ 115C-380. Penalty for violation.

Any parent, guardian or other person violating the provisions of this Part shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than 30 days, or both, in the discretion of the court. (1955, c. 1372, art. 20, s. 4; 1969, c. 799, s. 2; 1981, c. 423, s. 1.)

§ 115C-381. Attendance counselors; reports; prosecutions.

The Superintendent of Public Instruction shall prepare such rules and procedures and furnish such blanks for teachers and other school officials as may be necessary for reporting such case of unlawful absence or lack of attendance to the attendance counselor of the respective local school administrative units. Such rules shall provide, among other things, for a notification in writing, to the person responsible for the nonattendance of any child, that the case is to be reported to the attendance counselor of the local school administrative unit unless the law is complied with immediately. Upon recommendation of the superintendent, local boards of education may employ attendance counselors and such counselors shall have authority to report and verify on oath the necessary criminal warrants or other documents for the prosecutions of violations of this Part: Provided, that local school administrative units shall provide in their local operating budgets for travel and necessary office expense for such attendance counselors as may be employed through State or local funds, or both. The State Board of Education shall determine the formula for allocating attendance counselors to the various local school administrative units, establish their qualifications, and develop a salary schedule which shall be applicable to such personnel: Provided, that persons now employed by local boards of education as attendance officers shall be deemed qualified as attendance counselors under the terms of this Part subject to the approval of said

local boards of education: Provided, further, that until qualified persons become available, local boards of education are hereby authorized to employ as attendance counselors persons not determined by the State Board of Education to be qualified under the terms of this Part.

The school attendance counselor shall investigate all violators of the provisions of this Part. The reports of unlawful absence required to be made by teachers and principals to the attendance counselor shall, in his hands, in case of any prosecution, constitute prima facie evidence of the violation of this Part and the burden of proof shall be upon the defendant to show the lawful attendance of the child or children upon an authorized school. (1955, c. 1372, art. 20, ss. 3, 5; 1957, c. 600; 1961, c. 186; 1963, c. 1223, ss. 8, 9; 1981, c. 423, s. 1.)

§ 115C-382. Investigation of indigency.

If affidavit shall be made by the parent of a child or by any other person that any child between the ages of seven and 16 years is not able to attend school by reason of necessity to work or labor for the support of himself or the support of the family, then the attendance counselor shall diligently inquire into the matter and bring it to the attention of some court allowed by law to act as a juvenile court, and said court shall proceed to find whether as a matter of fact such parents, or persons standing in loco parentis, are unable to send said child to school for the term of compulsory attendance for the reasons given. If the court shall find, after careful investigation, that the parents have made or are making bona fide effort to comply with the compulsory attendance law, and by reason of illness, lack of earning capacity, or any other cause which the court may deem valid and sufficient, are unable to send said child to school, then the court shall find and state what help is needed for the family to enable compliance with the attendance law. The court shall transmit its findings to the director of social services of the county or city in which the case may arise for such social services officer's consideration and action. (1955, c. 1372, art. 20, s. 6; 1961, c. 186; 1963, c. 1223, s. 10; 1969, c. 982; 1981, c. 423, s. 1.)

§ 115C-383. Attendance of deaf and blind children.

(a) Deaf Children and Blind Children to Attend School; Age Limits; Minimum Attendance. — Every deaf child and every blind child between the ages of six and 18 years of sound mind in North Carolina who shall be qualified for admission into a State school for the deaf or the blind shall attend a school that has an approved program for the deaf or the blind, or in the case of a blind child, such child may attend a public school, for a term of not less than nine months each year. Parents, guardians, or custodians of every such blind or deaf child between the ages of six and 18 years shall send, or cause to be sent, such child to some school for the instruction of the blind or deaf or public school as herein provided. As to any deaf child, or any blind child not attending a public school as herein provided, the superintendent of any school for the blind or deaf may exempt any such child from attendance at any session or during any year, and may discharge from his custody any such blind or deaf child whenever such discharge seems necessary or proper. Such discharge or exemption shall be reviewed by the board of directors upon petition by the parent, guardian, or other interested person or the child who has been exempted or discharged: Provided, however, that such board shall not be required to review such discharge or exemption more than once during each calendar year. Whenever a blind or deaf child reaches the age of 18 years and is still unable to become self-supporting because of his defects, such child shall continue in said school until he reaches the age of 21, unless he becomes capable of self-support at an earlier date.

(b) Parents, etc., Failing to Enroll Deaf Child in School Guilty of Misdemeanor; Provisos. — The parents, guardians, or custodians of any deaf child between the ages of six and 18 years failing to enroll such deaf child or children in some school for instruction as provided herein, shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court: Provided, that this subsection shall not apply to or be enforced against the parent, guardian, or custodian of any deaf child until such time as the superintendent of any school for the instruction of the deaf shall in his discretion serve written notice on such parent, guardian, or custodian, directing that such child be sent to the institution, advising such parents, guardians, or custodians of the legal requirements of this subsection: Provided, further, that the willful failure of such parent, guardian, or custodian shall constitute a continuing offense and shall not be barred by the statute of limitations.

(c) Parents, etc., Failing to Send Blind Child to School Guilty of Misdemeanor; Provisos. — The parents, guardians, or custodians of any blind child between the ages of six and 18 years failing to send such child to some school for the instruction of the blind or public school shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, at the discretion of the court. This subsection shall not be enforced against the parents, guardians, or custodians of any blind child until such time as the superintendent of some school for the instruction of the blind shall in his discretion serve written notice on such parents, guardians, or custodians directing that such child be sent to the said school or to a public school, advising such parents, guardians, or custodians of the legal requirements of this subsection: Provided, further, that the willful failure of such parents, guardians, or custodians shall constitute a continuing offense and shall not be barred by the statute of limitations. The authorities of the Governor Morehead School shall not be compelled to retain in their custody or under their instruction any incorrigible person of confirmed immoral habits.

(d) Local Superintendent to Report Blind and Deaf Children. — It shall be the duty of the local superintendents to report the names and addresses of parents, guardians, or custodians of any deaf or blind children residing within their respective local school administrative units to the superintendent of the institution provided for each. Such report also shall be made to the Department of Public Instruction. (1955, c. 1372, art. 20, ss. 7-10; 1969, c. 749, s. 1; 1981, c. 423, s. 1.)

Part 2. Student Records and Fees.

§ 115C-384. Student records and fees.

(a) In General. — The local board of education has the power to regulate fees, charges and solicitations subject to the provisions of G.S. 115C-47(6).

(b) Refund of Fees Upon Transfer of Pupils.

(1) As used in this subsection:

- a. "Month" shall mean 20 school days.
- b. "First semester" shall mean the first 90 teaching days of the 180 days of the school year.
- c. "Second semester" shall mean the last 90 teaching days of the 180 days of the school year.
- d. "Term" shall have the same meaning as that of first semester or second semester.

(2) In all cases where pupils of a local school administrative unit of the public school system transfer to some other public school in another local school administrative unit or such pupils are compelled to leave

the school in which they are enrolled because of some serious or permanent illness, or for any other good and valid reason, then such pupils or their parents shall be entitled to a refund of the fees and charges paid by them as follows:

- a. If the transfer or departure of the pupils from the school in which they are enrolled takes place within one month after enrollment, then all such fees and charges shall be refunded in full.
 - b. If the transfer or leaving the school on the part of said pupils takes place after the first month and before the middle of the first semester, then one half of the fees for the first semester shall be refunded, and all fees and charges for the second semester shall be refunded.
 - c. If the pupils transfer or leave the school after the middle of the first semester, then no first semester fees or charges shall be refunded.
 - d. If the fees and charges on the part of such pupils have been paid for a year and such pupils transfer or leave the school at the end of the first semester or within the first month of the second semester, then all second semester fees and charges shall be refunded in full.
 - e. If the fees and charges herein described and set forth have been paid for one year, and the pupils transfer or leave the school before the middle of the second semester, then one half of the second semester fees shall be refunded.
 - f. The words "fees" and "charges" as used in this subsection shall not include any fees or charges paid for insurance or fees charged for expendable materials.
 - g. If the pupils transfer or leave the school after the middle of the second semester, then no fees shall be refunded.
 - h. If the amount of total refund as determined by this subsection shall be less than one dollar (\$1.00), no refund shall be paid.
- (3) The principal shall be responsible for refunding fees and charges at the place of the collection of the fees and charges by check made payable to the parent or guardian of pupils leaving the school as noted in subdivision (2) above.

(c) Rental Fees for Textbooks Prohibited; Damage Fees Authorized. — No rental fees are permitted for the use of textbooks, but damage fees may be collected pursuant to the provisions of G.S. 115C-100. (1969, c. 756; 1981, c. 423, s. 1.)

§§ 115C-385 to 115C-389: Reserved for future codification purposes.

ARTICLE 27.

Discipline.

§ 115C-390. School personnel may use reasonable force.

Principals, teachers, substitute teachers, voluntary teachers, teacher aides and assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. No local board of education or district committee shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section. (1955, c. 1372, art. 17, s. 4; 1959, c. 1016; 1969, c. 638, ss. 2, 3; 1971, c. 434; 1981, c. 423, s. 1.)

Cross References. — As to allowance of attorneys' fees in actions against principals or teachers resulting from use of corporal punishment, see § 6-21.4.

CASE NOTES

Regulation of Corporal Punishment. — Winston-Salem/Forsyth County Bd. of Educ., County school board's policy regulating corporal punishment upheld. See *Kurtz v.* 39 N.C. App. 412, 250 S.E.2d 718 (1979), (decided under former § 115-146).

§ 115C-391. Suspension or expulsion of pupils.

(a) Local boards of education shall adopt policies governing the conduct of students and shall cause these policies to be published and made available at the beginning of each school year to each student and his parents. Local boards of education shall also adopt policies, not inconsistent with the provisions of this section or the Constitutions of the United States and North Carolina, establishing procedures to be followed by school officials in suspending or expelling any pupil from school and shall cause such procedures to be published and made available at the beginning of each school year to each student and his parents.

(b) The principal of a school, or his delegate, shall have authority to suspend for a period of 10 days or less any student who willfully violates policies of conduct established by the local board of education: Provided, that a student suspended pursuant to this subsection shall be provided an opportunity to take any quarterly, semester or grading period examinations missed during the suspension period.

(c) The principal of a school, with the prior approval of the superintendent, shall have the authority to suspend for periods of times in excess of 10 school days but not exceeding the time remaining in the school year, any pupil who willfully violates the policies of conduct established by the local board of education. The pupil or his parents may appeal the decision of the principal to the local board of education.

(d) A local board of education may, upon recommendation of the principal and superintendent, expel any student 14 years of age or older who has been convicted of a felony and whose continued presence in school constitutes a clear threat to the safety and health of other students or employees. Notwithstanding the provisions of G.S. 115C-112, a local board of education has no duty to continue to provide a child with special needs, expelled pursuant to this subsection, with any special education or related services during the period of expulsion.

(e) A final decision of the local board of education pursuant to subsections (c) and (d) shall be subject to judicial review in the manner provided by Article 4, Chapter 150A of the General Statutes. (1955, c. 1372, art. 17, s. 5; 1959, c. 573, s. 12; 1963, c. 1223, s. 5; 1965, c. 584, s. 14; 1971, c. 1158; 1979, c. 874, s. 1; 1981, c. 423, s. 1.)

Cross References. — As to the suspension or dismissal of pupils by a principal, see § 115C-288.

§ 115C-392. Appeal of disciplinary measures.

Appeals of disciplinary measures are subject to the provisions of G.S. 115C-45(c). (1981, c. 423, s. 1.)

§§ 115C-393 to 115C-397: Reserved for future codification purposes.

ARTICLE 28.

Student Liability.

§ 115C-398. Damage to school buildings, furnishings, textbooks.

Students may be liable for damage to school buildings, furnishings and textbooks pursuant to the provisions of G.S. 115C-523, 115C-100 and 14-132. (1981, c. 423, s. 1.)

§ 115C-399. Trespass on or damage to school bus.

Any person who willfully trespasses upon or damages a school bus may be liable pursuant to the provisions of G.S. 14-132.2. (1981, c. 423, s. 1.)

ARTICLE 29.

Protective Provisions and Maintenance of Student Records.

§ 115C-400. School personnel to report child abuse.

Any person who has cause to suspect child abuse or neglect has a duty to report the case of the child to the Director of Social Services of the county, as provided in G.S. 7A-543 to 7A-552. (1981, c. 423, s. 1.)

§ 115C-401. School counseling inadmissible evidence.

Information given to a school counselor to enable him to render counseling services may be privileged as provided in G.S. 8-53.4. (1981, c. 423, s. 1.)

§ 115C-402. Student records; maintenance; contents.

The official record of each student enrolled in North Carolina public schools shall be permanently maintained in the files of the appropriate school after the student graduates, or should have graduated, from high school.

The official record shall contain, as a minimum, adequate identification data including date of birth, attendance data, grading and promotion data, and such other factual information as may be deemed appropriate by the local board of education having jurisdiction over the school wherein the record is maintained. (1975, c. 624, ss. 1, 2; 1981, c. 423, s. 1.)

§§ 115C-403 to 115C-407: Reserved for future codification purposes.

SUBCHAPTER VII. FISCAL AFFAIRS.

ARTICLE 30.

*Financial Powers of the State Board of Education.***§ 115C-408. Funds under control of the State Board of Education.**

The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in Sec. 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

Cross References. — As to powers and duties of the Board generally, see § 115C-12.

§ 115C-409. Power to accept federal funds and aid.

(a) The Board is authorized to accept, receive, use or reallocate to local school administrative units any federal funds, or aids, that may be appropriated now or hereafter by the federal government for the encouragement and improvement of any phase of the free public school program which, in the judgment of the Board, will be beneficial to the operation of the schools. However, the Board is not authorized to accept any such funds upon any condition that the public schools of this State shall be operated contrary to any provisions of the Constitution or statutes of this State.

(b) The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965) or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-410. Power to accept gifts and grants.

The Board is authorized to accept, receive, use, or reallocate to local school administrative units any gifts, donations, grants, bequests, or other forms of voluntary contributions. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-411. Authority to invest school funds.

The Board is authorized to direct the State Treasurer to invest in interest-bearing securities any funds which may come into its possession, and which it deems expedient to invest, as other funds of the State are now or may be hereafter invested. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-412. Power to purchase at mortgage sales.

The State Board of Education is authorized to purchase at public sale any land upon which it has a mortgage or deed of trust securing the purchase price, or any part thereof, and when any land so sold and purchased by the said Board of Education is a part of a drainage district theretofore constituted, upon which said land assessments have been levied for the maintenance thereof, such assessments shall be paid by the said State Board of Education, as if said land had been purchased or owned by an individual. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-413. Power to adjust debts.

The State Board of Education is hereby authorized and empowered to settle, compromise or otherwise adjust any indebtedness due it upon the purchase price of any land or property sold by it, or to cancel and surrender the notes, mortgages, trust deeds, or other evidence of indebtedness without payment, when, in the discretion of said Board, it appears that it is proper to do so. The Board of Education is further authorized and empowered to sell or otherwise dispose of any such notes, mortgages, trust deeds, or other evidence of indebtedness. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-414. State Board as successor to powers of abolished commissions and boards.

The Board shall succeed to all the powers and trusts of the president and directors of the Literary Fund of North Carolina; and to all the powers, functions, duties, and property of all abolished commissions and boards including the State School Commission, the State Textbook Commission, the Department of Human Resources, and the State Board of Commercial Education, including the power to take, hold and convey property, both real and personal, to the same extent that any corporation might take, hold and convey the same under the laws of this State. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-415. Report on operation of State Literary Fund.

The State Board of Education shall report to the General Assembly on the operation of the State Literary Fund. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-416. Power to allot funds for teachers and other personnel.

The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher loan from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to local school administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the local school administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for attendance counselors.

The Board is further authorized, in its discretion, to allot teaching personnel to local school administrative units for experimental programs and purposes. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§§ 115C-417 to 115C-421: Reserved for future codification purposes.

ARTICLE 31.***The School Budget and Fiscal Control Act.*****Part 1. General Provisions.****§ 115C-422. Short title.**

This Article may be cited as "The School Budget and Fiscal Control Act." (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-423. Definitions.

The words and phrases defined in this section have the meanings indicated when used in this Article, unless the context clearly requires another meaning:

- (1) "Budget" is a plan proposed by a board of education for raising and spending money for specified school programs, functions, activities, or objectives during a fiscal year.

- (2) "Budget resolution" is a resolution adopted by a board of education that appropriates revenues for specified school programs, functions, activities, or objectives during a fiscal year.
- (3) "Budget year" is the fiscal year for which a budget is proposed and a budget resolution is adopted.
- (4) "Fiscal year" is the annual period for the compilation of fiscal operations. The fiscal year begins on July 1 and ends on June 30.
- (5) "Fund" is an independent fiscal and accounting entity consisting of cash and other resources together with all related liabilities, obligations, reserves, and equities which are segregated by appropriate accounting techniques for the purpose of carrying on specific activities or attaining certain objectives in accordance with established legal regulations, restrictions or limitations. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-424. Uniform system; conflicting laws and local acts superseded.

It is the intent of the General Assembly by enactment of this Article to prescribe for the public schools a uniform system of budgeting and fiscal control. To this end, all provisions of general laws and local acts in effect as of July 1, 1976, and in conflict with the provisions of this Article are repealed except local acts providing for the levy or for the levy and collection of school supplemental taxes. No local act enacted or taking effect after July 1, 1976, may be construed to modify, amend, or repeal any portion of this Article unless it expressly so provides by specific reference to the appropriate section. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Part 2. Budget.

§ 115C-425. Annual balanced budget resolution.

(a) Each local school administrative unit shall operate under an annual balanced budget resolution adopted and administered in accordance with this Article. A budget resolution is balanced when the sum of estimated net revenues and appropriated fund balances is equal to appropriations. Appropriated fund balance in any fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues, as those figures stand at the close of the fiscal year next preceding the budget year. The budget resolution shall cover one fiscal year.

(b) It is the intent of this Article that all moneys received and expended by a local school administrative unit should be included in the school budget resolution. Therefore, notwithstanding any other provisions of law, after July 1, 1976, no local school administrative unit may expend any moneys, regardless of their source (including moneys derived from federal, State, or private sources), except in accordance with a budget resolution adopted pursuant to this Article.

(c) Subsection (b) of this section does not apply to funds of individual schools, as defined in G.S. 115C-448. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-426. Uniform budget format.

(a) The State Board of Education, in cooperation with the Local Government Commission, shall cause to be prepared and promulgated a standard budget format for use by local school administrative units throughout the State.

(b) The uniform budget format shall be organized so as to facilitate accomplishment of the following objectives: (i) to enable the board of education and the board of county commissioners to make the local educational and local fiscal policies embodied therein; (ii) to control and facilitate the fiscal management of the local school administrative unit during the fiscal year; and (iii) to facilitate the gathering of accurate and reliable fiscal data on the operation of the public school system throughout the State.

(c) The uniform budget format shall require the following funds:

- (1) The State Public School Fund.
- (2) The local current expense fund.
- (3) The capital outlay fund.

In addition, other funds may be required to account for trust funds, federal grants restricted as to use, and special programs. Each local school administrative unit shall maintain those funds shown in the uniform budget format that are applicable to its operations.

(d) The State Public School Fund shall include appropriations for the current operating expenses of the public school system from moneys made available to the local school administrative unit by the State Board of Education.

(e) The local current expense fund shall include appropriations sufficient, when added to appropriations from the State Public School Fund, for the current operating expense of the public school system in conformity with the educational goals and policies of the State and the local board of education, within the financial resources and consistent with the fiscal policies of the board of county commissioners. These appropriations shall be funded by revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7 of the Constitution, moneys made available to the local school administrative unit by the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, State money disbursed directly to the local school administrative unit, and other moneys made available or accruing to the local school administrative unit for the current operating expenses of the public school system.

(f) The capital outlay fund shall include appropriations for:

- (1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages.
- (2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance.
- (3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment.
- (4) The acquisition of school buses as additions to the fleet.
- (5) The acquisition of activity buses and other motor vehicles.
- (6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

The cost of acquiring or constructing a new building, or reconstructing, enlarging, or renovating an existing building, shall include the cost of all real property and interests in real property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and equipment necessary or useful in connection therewith; financing charges; the cost of plans, specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or incidental to the construction, reconstruction, enlargement, or renovation.

No contract for the purchase of a site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115C-431 shall, insofar as the same may be applicable, be used to settle the disagreement.

Appropriations in the capital outlay fund shall be funded by revenues made available for capital outlay purposes by the State Board of Education and the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

(g) Other funds shall include appropriations for such purposes funded from such sources as may be prescribed by the uniform budget format. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Cross References. — As to controller's duty to keep records of state appropriations, see § 115C-29.

§ 115C-427. Preparation and submission of budget and budget message.

(a) Before the close of each fiscal year, the superintendent shall prepare a budget for the ensuing year for consideration by the board of education. The budget shall comply in all respects with the limitations imposed by G.S. 115C-432.

(b) The budget, together with a budget message, shall be submitted to the board of education not later than May 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the educational goals fixed by the budget for the budget year, should set forth the reasons for stated changes from the previous year in program goals, programs, and appropriation levels, and should explain any major changes in educational or fiscal policy. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-428. Filing and publication of the budget; budget hearing.

(a) On the same day that he submits the budget to the board of education, the superintendent shall file a copy of it in his office where it shall remain available for public inspection until the budget resolution is adopted. He may also publish a statement in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county that the budget has been submitted to the board of education, and is available for public inspection in the office of the superintendent of schools. The statement should also give notice of the time and place of the budget hearing authorized by subsection (b) of this section.

(b) Before submitting the budget to the board of county commissioners, the board of education may hold a public hearing at which time any persons who wish to be heard on the school budget may appear. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-429. Approval of budget; submission to county commissioners; commissioners' action on budget.

(a) Upon receiving the budget from the superintendent and following the public hearing authorized by G.S. 115C-428(b), if one is held, the board of education shall consider the budget, make such changes therein as it deems advisable, and submit the entire budget as approved by the board of education to the board of county commissioners not later than May 15, or such later date as may be fixed by the board of county commissioners.

(b) The board of county commissioners shall complete its action on the school budget on or before July 1, or such later date as may be agreeable to the board of education. The commissioners shall determine the amount of county revenues to be appropriated in the county budget ordinance to the local school administrative unit for the budget year. The board of county commissioners may, in its discretion, allocate part or all of its appropriation by purpose, function, or project as defined in the uniform budget format.

(c) The board of county commissioners shall have full authority to call for, and the board of education shall have the duty to make available to the board of county commissioners, upon request, all books, records, audit reports, and other information bearing on the financial operation of the local school administrative unit.

(d) Nothing in this Article shall be construed to place a duty on the board of commissioners to fund a deficit incurred by a local school administrative unit through failure of the unit to comply with the provisions of this Article or rules and regulations issued pursuant hereto, or to provide moneys lost through misapplication of moneys by a bonded officer, employee or agent of the local school administrative unit when the amount of the fidelity bond required by the board of education was manifestly insufficient. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-430. Apportionment of county appropriations among local school administrative units.

If there is more than one local school administrative unit in a county, all appropriations by the county to the local current expense funds of the units, except appropriations funded by supplemental taxes levied less than countywide pursuant to a local act or G.S. 115C-501 to 115C-511, must be apportioned according to the membership of each unit. County appropriations are properly apportioned when the dollar amount obtained by dividing the amount so appropriated to each unit by the total membership of the unit is the same for each unit. The total membership of the local school administrative unit is the unit's projected average daily membership for the budget year to be determined by and certified to the unit and the board of county commissioners by the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations. At the joint meeting, the entire school budget

shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, either board may refer the dispute to the clerk of superior court for arbitration within three days after the day of the joint meeting. The clerk shall render his decision on the matters in disagreement within 10 days after the day of the referral. The clerk of the superior court shall have the authority to subpoena or issue any orders necessary to have appear before him any member of a board of education and any member of a board of commissioners involved in the dispute and to require that the records of either board be presented to him for the purpose of arbitration of the issues.

(c) Within 10 days after the date of award, either board may appeal the clerk's award to the superior court division of the General Court of Justice. The court shall find the facts as to the amount of money necessary to maintain a system of free public schools, and the amount of money needed from the county to make up this total. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the appeal, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The issue submitted to the jury shall be what amount of money is needed from sources under the control of the board of county commissioners to maintain a system of free public schools.

All findings of fact in the superior court, whether found by the judge or a jury, shall be conclusive. When the facts have been found, the court shall give judgment ordering the board of county commissioners to appropriate a sum certain to the local school administrative unit, and to levy such taxes on property as may be necessary to make up this sum when added to other revenues available for the purpose.

(d) If an appeal is taken to the appellate division of the General Court of Justice, and if such an appeal would result in a delay beyond a reasonable time for levying taxes for the year, the judge shall order the board of county commissioners to appropriate to the local school administrative unit for deposit in the local current expense fund a sum of money sufficient when added to all other moneys available to that fund to equal the amount of this fund for the previous year. All papers and records relating to the case shall be considered a part of the record on appeal.

(e) If, in an appeal taken pursuant to this section, the final judgment of the General Court of Justice is rendered after the due date prescribed by law for property taxes, the board of county commissioners is authorized to levy such supplementary taxes as may be required by the judgment, notwithstanding any other provisions of law with respect to the time for doing acts necessary to a property tax levy. Upon making a supplementary levy under this subsection, the board of county commissioners shall designate the person who is to compute and prepare the supplementary tax receipts and records for all such taxes. Upon delivering the supplementary tax receipts to the tax collector, the board of county commissioners shall proceed as provided in G.S. 105-321.

The due date of supplementary taxes levied under this subsection is the date of the levy, and the taxes may be paid at par or face amount at any time before the one hundred and twentieth day after the due date. On or after the one hundred and twentieth day and before the one hundred and fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent

(2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of one percent ($\frac{3}{4}$ of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be allowed. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-432. The budget resolution; adoption; limitations; tax levy; filing.

(a) After the board of county commissioners has made its appropriations to the local school administrative unit, or after the appeal procedure set out in G.S. 115C-431 has been concluded, the board of education shall adopt a budget resolution making appropriations for the budget year in such sums as the board may deem sufficient and proper. The budget resolution shall conform to the uniform budget format established by the State Board of Education.

(b) The following directions and limitations shall bind the board of education in adopting the budget resolution:

- (1) If the county budget ordinance allocates appropriations to the local school administrative unit pursuant to G.S. 115C-429(b), the school budget resolution shall conform to that allocation. The budget resolution may be amended to change allocated appropriations only in accordance with G.S. 115C-433.
- (2) Subject to the provisions of G.S. 115C-429(d), the full amount of any lawful deficit from the prior fiscal year shall be appropriated.
- (3) Contingency appropriations in a fund may not exceed five percent (5%) of the total of all other appropriations in that fund. Each expenditure to be charged against a contingency appropriation shall be authorized by resolution of the board of education, which resolution shall be deemed an amendment to the budget resolution, not subject to G.S. 115C-429(b) and 115C-433(b), setting up or increasing an appropriation for the object of expenditure authorized. The board of education may authorize the superintendent to authorize expenditures from contingency appropriations subject to such limitations and procedures as it may prescribe. Any such expenditure shall be reported to the board of education at its next regular meeting and recorded in the minutes.
- (4) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated.
- (5) The sum of estimated net revenues and appropriated fund balances in each fund shall be equal to appropriations in that fund.
- (6) No appropriation may be made that would require the levy of supplemental taxes pursuant to a local act or G.S. 115C-501 to 115C-511 in excess of the rate of tax approved by the voters, or the expenditure of revenues for purposes not permitted by law.
- (7) In estimating revenues to be realized from the levy of school supplemental taxes pursuant to a local act or G.S. 115C-501 to 115C-511, the estimated percentage of collection may not exceed the percentage of that tax actually realized in cash during the preceding fiscal year, or if the tax was not levied in the preceding fiscal year, the percentage of the general county tax levy actually realized in cash during the preceding fiscal year.
- (8) Amounts to be realized from collection of supplemental taxes levied in prior fiscal years shall be included in estimated revenues.
- (9) No appropriation may be made to or from the capital outlay fund to or from any other fund, except as permitted by G.S. 115C-433(d).

(c) If the local school administrative unit levies its own supplemental taxes pursuant to a local act, the budget resolution shall make the appropriate tax levy in accordance with the local act, and the board of education shall notify the county or city that collects the levy in accordance with G.S. 159-14.

(d) The budget resolution shall be entered in the minutes of the board of education, and within five days after adoption, copies thereof shall be filed with the superintendent, the school finance officer and the county finance officer. The board of education shall file a copy of the budget as approved and a copy of the budget resolution with the Controller of the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-433. Amendments to the budget resolution; budget transfers.

(a) Subject to the provisions of subsection (b) of this section, the board of education may amend the budget resolution at any time after its adoption, in any manner, so long as the resolution as amended continues to satisfy the requirements of G.S. 115C-425 and 115C-432.

(b) If the board of county commissioners allocates part or all of its appropriations pursuant to G.S. 115C-429(b), the board of education must obtain the approval of the board of county commissioners for an amendment to the budget that (i) increases or decreases expenditures from the capital outlay fund for projects listed in G.S. 115C-426(f)(1) or (2), or (ii) increases or decreases the amount of county appropriation allocated to a purpose or function by twenty-five percent (25%) or more from the amount contained in the budget ordinance adopted by the board of county commissioners: Provided, that at its discretion, the board may in its budget ordinance specify a lesser percentage, so long as such percentage is not less than ten percent (10%).

(c) The board of education may by appropriate resolution authorize the superintendent to transfer moneys from one appropriation to another within the same fund, subject to such limitations and procedures as may be prescribed by the board of education or State or federal law or regulations. Any such transfers shall be reported to the board of education at its next regular meeting and shall be entered in the minutes.

(d) The board of education may amend the budget to transfer money to or from the capital outlay fund to or from any other fund, with the approval of the board of county commissioners, to meet emergencies unforeseen and unforeseeable at the time the budget resolution was adopted. When such an emergency arises, the board of education may adopt a resolution requesting approval from the board of commissioners for the transfer of a specified amount of money to or from the capital outlay fund to or from some other fund. The resolution shall state the nature of the emergency, why the emergency was not foreseen and was not foreseeable when the budget resolution was adopted, what specific objects of expenditure will be added or increased as a result of the transfer, and what objects of expenditure will be eliminated or reduced as a result of the transfer. A certified copy of this resolution shall be transmitted to the board of county commissioners for (its) approval and to the boards of education of all other local school administrative units in the county for their information. The board of commissioners shall act upon the request within 30 days after it is received by the clerk to the board of commissioners or the chairman of the board of commissioners, after having afforded the boards of education of all other local school administrative units in the county an opportunity to comment on the request. The board of commissioners may either approve or disapprove the request as presented. Upon either approving or disapproving the request, the board of commissioners shall forthwith so notify the board of education making the request and any other board of education

that exercised its right to comment thereon. Upon receiving such notification, the board of education may proceed to amend the budget resolution in the manner indicated in the request. Failure of the board of county commissioners to act within the time allowed for approval or disapproval shall be deemed approval of the request. The time limit for action by the board of county commissioners may be extended by mutual agreement of the board of county commissioners and the board of education making the request. A budget resolution amended in accordance with this subsection need not comply with G.S. 115C-430. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-434. Interim budget.

In case the adoption of the budget resolution is delayed until after July 1, the board of education shall make interim appropriations for the purpose of paying salaries and the usual ordinary expenses of the local school administrative unit for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim appropriations so made and expended shall be charged to the proper appropriations in the budget resolution. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Part 3. Fiscal Control.

§ 115C-435. School finance officer.

Each local school administrative unit shall have a school finance officer who shall be appointed or designated by the superintendent of schools and approved by the board of education, with the school finance officer serving at the pleasure of the superintendent. The duties of school finance officer may be conferred on any officer or employee of the local school administrative unit or, upon request of the superintendent, with approval by the board of education and the board of county commissioners, on the county finance officer. In counties where there is more than one local school administrative unit, the duties of finance officer may be conferred on any one officer or employee of the several local school administrative units by agreement between the affected superintendents with the concurrence of the affected board of education and the board of county commissioners. The position of school finance officer is hereby declared to be an office that may be held concurrently with other appointive, but not elective, offices pursuant to Article VI, Sec. 9, of the Constitution. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-436. Duties of school finance officer.

(a) The school finance officer shall be responsible to the superintendent for:

- (1) Keeping the accounts of the local school administrative unit in accordance with generally accepted principles of governmental accounting, the rules and regulations of the State Board of Education, and the rules and regulations of the Local Government Commission.
- (2) Giving the preaudit certificate required by G.S. 115C-441.
- (3) Signing and issuing all checks, drafts, and State warrants by the local school administrative unit, investing idle cash, and receiving and depositing all moneys accruing to the local school administrative unit.
- (4) Preparing and filing a statement of the financial condition of the local school administrative unit as often as requested by the superintendent, and when requested in writing, with copy to the superintendent, by the board of education or the board of county commissioners.

- (5) Performing such other duties as may be assigned to him by law, by the superintendent, or by rules and regulations of the State Board of Education and the Local Government Commission.

All references in other portions of the General Statutes or local acts to school treasurers, county treasurers, or other officials performing any of the duties conferred by this section on the school finance officer shall be deemed to refer to the school finance officer.

(b) The State Board of Education has authority to issue rules and regulations having the force of law governing procedures for the disbursement of money allocated to the local school administrative unit by or through the State. The Local Government Commission has authority to issue rules and regulations having the force of law governing procedures for the disbursement of all other moneys allocated or accruing to the local school administrative unit. The State Board of Education and the Local Government Commission may inquire into and investigate the internal control procedures of a local school administrative unit with respect to moneys under their respective jurisdictions and may require any modifications in internal control procedures which may be necessary or desirable to prevent embezzlements or mishandling of public moneys. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-437. Allocation of revenues to the local school administrative unit by the county.

Revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7, of the Constitution and taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511 shall be remitted to the school finance officer by the officer having custody thereof within 10 days after the close of the calendar month in which the revenues were received or collected. Revenues appropriated to the local school administrative unit by the board of county commissioners from general county revenues shall be made available to the school finance officer by such procedures as may be mutually agreeable to the board of education and the board of county commissioners, but if no such agreement is reached, these funds shall be remitted to the school finance officer by the county finance officer in monthly installments sufficient to meet its lawful expenditures from the county appropriation until the county appropriation to the local school administrative unit is exhausted. Each installment shall be paid not later than 10 days after the close of each calendar month. When revenue has been appropriated to the local school administrative unit by the board of county commissioners from funds which carry specific restrictions binding upon the county as recipient, the board of commissioners must inform the local school administrative unit in writing of those restrictions. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-438. Provision for disbursement of State money.

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the Controller of the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The Controller shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the

State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The Controller may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue.

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the Controller of the State Board of Education. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Cross References. — As to controller's duty on issuing requisition for funds, see § 115C-29.

§ 115C-439. Facsimile signatures.

The board of education may provide by appropriate resolution for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts and in signing the preaudit certificate on contracts or purchase orders. The board shall charge the finance officer or some other bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-440. Accounting system.

(a) System Required. — Each local school administrative unit shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget resolution as originally adopted and subsequently amended.

(b) Basis of Accounting. — Local school administrative units shall use the modified accrual basis of accounting in recording transactions.

(c) Encumbrance Systems. — Except as otherwise provided in this subsection, no local school administrative unit is required to record or show encumbrances in its accounting system. The Local Government Commission, in consultation with the State Board of Education, shall establish regulations, based on total membership of the local school administrative unit or some other appropriate criterion, setting forth which units are required to maintain an accounting system that records and shows the encumbrances outstanding against each category of expenditure appropriated in the budget resolution. Any other local school administrative unit may record and show encumbrances in its accounting system.

(d) Commission Regulations. — The Local Government Commission, in consultation with the State Board of Education, may prescribe rules and regulations having the force of law as to:

- (1) Features of accounting systems to be maintained by local school administrative units.
- (2) Bases of accounting, including identifying in detail the characteristics of a modified accrual basis and identifying what revenues are susceptible to accrual.
- (3) Definitions of terms not clearly defined in this Article.

These rules and regulations may be varied according to the size of the local school administrative unit, or according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-441. Budgetary accounting for appropriations.

(a) Incurring Obligations. — No obligation may be incurred by a local school administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

“This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

.....
(Date)

.....
(Signature of finance officer)”

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

(b) Disbursements. — When a bill, invoice, or other claim against a local school administrative unit is presented, the finance officer shall either approve or disapprove the necessary disbursement. The finance officer may approve the claim only if he determines the amount to be payable, the budget resolution includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the board of education.

(c) Board of Education Approval of Bills, Invoices, or Claims. — The board of education may, as permitted by this subsection, approve a bill, invoice, or other claim against the local school administrative unit that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget resolution, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The board of education shall approve payment by formal resolution stating the board’s reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. — A local school administrative unit may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository, by a bank wire transfer from an official depository, or by a warrant on the State Treasurer. Except as provided in this subsection each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or signed by the chairman or some other member of the board pursuant to subsection (c) of this section. The certificate shall take substantially the following form:

"This disbursement has been approved as required by the School Budget and Fiscal Control Act.

.....
(Signature of finance officer)"

No certificate is required on payroll checks or drafts or on State warrants.
(e) Penalties. — If an officer or employee of a local school administrative unit incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he and the sureties on his official bond are liable for any sums so committed or disbursed. If the finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, he and the sureties on his official bond are liable for any sums illegally committed or disbursed thereby. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

Local Modification. — Pender: 1981, c. 775.
Cross References. — As to civil liability of board of education members, see § 115C-48.

§ 115C-442. Fidelity bonds.

- (a) The finance officer shall give a true accounting and faithful performance bond with sufficient sureties in an amount to be fixed by the board of education, not less than ten thousand dollars (\$10,000) nor more than two hundred fifty thousand dollars (\$250,000). This bond shall cover the faithful performance of all duties placed on the finance officer by or pursuant to law and the faithful accounting for all funds in his custody except State funds placed to the credit of the local school administrative unit by the State Treasurer. The premium on the bond shall be paid by the local school administrative unit.
- (b) The State Board of Education shall provide for adequate and appropriate bonding of school finance officers and such other employees as it deems appropriate with respect to the disbursement of State funds. When it requires such bonds, the State Board of Education is authorized to place the bonds and pay the premiums thereon.
- (c) The treasurer of each individual school and all other officers, employees and agents of each local school administrative unit who have custody of public school money in the normal course of their employment or agency shall give a true accounting bond with sufficient sureties in an amount to be fixed by the board of education. The premiums on these bonds shall be paid by the local school administrative unit. Instead of individual bonds, a local school administrative unit may provide for a blanket bond to cover all officers, employees, and agents of the local school administrative unit required to be bonded, except the finance officer. The finance officer may be included within the blanket bond if the blanket bond protects against risks not protected against by the individual bond. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-443. Investment of idle cash.

- (a) A local school administrative unit may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the board of education may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the board of education. The investment program shall be so managed that investments and deposits can be converted into cash when needed.
- (b) Moneys may be deposited at interest in any bank or trust company in this State in the form of certificates of deposit or such other forms of time deposit

as the Local Government Commission may approve. Investment deposits shall be secured as provided in G.S. 115C-444(b).

(c) Moneys may be invested in the following classes of securities, and no others:

- (1) Obligations of the United States of America.
- (2) Obligations of any agency or instrumentality of the United States of America if the payment of interest and principal of such obligations is fully guaranteed by the United States of America.
- (3) Obligations of the State of North Carolina.
- (4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the Secretary of the Local Government Commission may impose.
- (5) Shares of any savings and loan association organized under the laws of this State and shares of any federal savings and loan association having its principal office in this State, to the extent that the investment in such shares is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Commissioner of Insurance of North Carolina to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes.
- (6) Obligations maturing no later than 18 months after the date of purchase of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, the Banks for Cooperatives, and the Federal Land Banks.
- (7) Any form of investment allowed by law to the State Treasurer.
- (8) Any form of investment allowed by G.S. 159-30 to local governments and public authorities.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local school administrative units may pay all incidental costs thereof and all reasonable cost of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(g) It is the intent of this Article that the foregoing provisions of this section shall apply only to those funds received by the local school administrative unit as required by G.S. 115C-437. The county finance officer shall be responsible for the investment of all county funds allocated to the local school administrative unit prior to such county funds actually being remitted to the school finance officer as provided by G.S. 115C-437. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-444. Selection of depository; deposits to be secured.

(a) Each board of education shall designate as the official depositories of the local school administrative unit one or more banks or trust companies in this State. It shall be unlawful for any money belonging to a local school administrative unit or an individual school to be deposited in any place, bank, or

trust company other than an official depository, except as permitted by G.S. 115C-443(b); however, moneys belonging to an administrative unit or an individual school may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts.

(b) Money on deposit in an official depository or deposited at interest pursuant to G.S. 115C-443(b) shall be secured by deposit insurance, surety bonds, or investment securities of such nature, in a sufficient amount to protect the administrative unit or an individual school on account of deposit of moneys made therein, and in such manner, as may be prescribed by rule or regulation of the Local Government Commission. When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by a local school administrative unit because of the default or insolvency of the depository. (1975, c. 437, s. 1; 1981, c. 423, s. 1; c. 682, s. 23; c. 866, ss. 1, 2.)

Effect of Amendments. — Session Laws 1981, c. 682, s. 23, effective July 1, 1981, added "however, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts" at the end of subsection (a), as it stood prior to the enactment of Session Laws 1981, c. 866, s. 1.

Sessions Laws 1981, c. 866, ss. 1, 2, added the

semicolon and the language following it at the end of the second sentence of subsection (a) and deleted "fully" preceding "secured" and substituted "a sufficient amount to protect the administrative unit or an individual school on account of deposit of moneys made therein" for "such amounts" in the first sentence of subsection (b).

§ 115C-445. Daily deposits.

Except as otherwise provided by law, all moneys collected or received by an officer, employee or agent of a local school administrative unit or an individual school shall be deposited in accordance with this section. Each officer, employee and agent of a local school administrative unit or individual school whose duty it is to collect or receive any taxes or other moneys shall deposit his collections and receipts daily. If the board of education gives its approval, deposits shall be required only when the moneys on hand amount to as much as two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made with the finance officer or in an official depository. Deposits in an official depository shall be immediately reported to the finance officer or individual school treasurer by means of a duplicate deposit ticket. The finance officer may at any time audit the accounts of any officer, employee or agent collecting or receiving any taxes or other moneys, and may prescribe the form and detail of these accounts. The accounts of such an officer, employee or agent shall be audited at least annually. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-446. Semiannual reports on status of deposits and investments.

Each school finance officer shall report to the Secretary of the Local Government Commission on January 1 and July 1 of each year, or such other dates as the Secretary may prescribe, the amounts of money then in his custody and in the custody of treasurers of individual schools within the local school administrative unit, the amount of deposits of such money in depositories, a list of all investment securities and time deposits held by the local school administrative unit and individual schools therein. In like manner, each bank or trust company acting as the official depository of any administrative unit or individual school may be required to report to the Secretary a description of the surety bonds or investment securities securing such public deposits. If the Secretary finds at any time that any moneys of a local school administrative unit or an

individual school are not properly deposited or secured, or are invested in securities not eligible for investment, he shall notify the officer in charge of the moneys of the failure to comply with law. Upon such notification, the officer shall comply with the law within 30 days, except as to the sale of securities not eligible for investment which shall be sold within nine months at a price to be approved by the Secretary. The Local Government Commission may extend the time for sale of ineligible securities, but no one extension may cover a period of more than one year. (1975, c. 437, s. 1; 1981, c. 423, s. 1; c. 866, s. 3.)

Effect of Amendments. — Session Laws 1981, c. 866, deleted "and a description of the surety bonds or investment securities securing

demand and time deposits" at the end of the first sentence and added the second sentence.

§ 115C-447. Annual independent audit.

Each local school administrative unit shall have its accounts and the accounts of individual schools therein audited as soon as possible after the close of each fiscal year by a certified public accountant or by an accountant certified by the Local Government Commission as qualified to audit local government accounts. The auditor who audits the accounts of a local school administrative unit shall also audit the accounts of its individual schools. The auditor shall be selected by and shall report directly to the board of education. The audit contract shall be in writing, shall include all its terms and conditions, and shall be submitted to the Secretary of the Local Government Commission for his approval as to form, terms and conditions. The terms and conditions of the audit contract shall include the scope of the audit, and the requirement that upon completion of the examination the auditor shall prepare a typewritten or printed report embodying financial statements and his opinion and comments relating thereto. The financial statements accompanying the auditor's report shall be prepared in conformity with generally accepted accounting principles. The auditor shall file a copy of the audit report with the Secretary of the Local Government Commission, the Controller of the State Board of Education, the board of education and the board of county commissioners, and shall submit all bills or claims for audit fees and costs to the Secretary of the Local Government Commission for his approval. It shall be unlawful for any local school administrative unit to pay or permit the payment of such bills or claims without this approval. Each officer, employee and agent of the local school administrative unit having custody of public money or responsibility for keeping records of public financial or fiscal affairs shall produce all books and records requested by the auditor and shall divulge such information relating to fiscal affairs as he may request. If any member of a board of education or any other public officer, employee or agent shall conceal, falsify, or refuse to deliver or divulge any books, records, or information, with an intent thereby to mislead the auditor or impede or interfere with the audit, he is guilty of a misdemeanor and upon conviction thereof may be fined not more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or both, in the discretion of the court.

The State Auditor, in consultation with the State Board of Education, shall have authority to prescribe the manner in which funds disbursed by administrative units by warrants on the State Treasurer shall be audited. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-448. Special funds of individual schools.

(a) The board of education shall appoint a treasurer for each school within the local school administrative unit that handles special funds. The treasurer shall keep a complete record of all moneys in his charge in such form and detail as may be prescribed by the finance officer of the local school administrative unit, and shall make such reports to the superintendent and finance officer of the local school administrative unit as they or the board of education may prescribe. Special funds of individual schools shall be deposited in an official depository of the local school administrative unit in special accounts to the credit of the individual school, and shall be paid only on checks or drafts signed by the principal of the school and the treasurer. The board of education may, in its discretion, waive the requirements of this section for any school which handles less than three hundred dollars (\$300.00) in any school year.

(b) Nothing in this section shall prevent the board of education from requiring that all funds of individual schools be deposited with and accounted for by the school finance officer. If this is done, these moneys shall be disbursed and accounted for in the same manner as other school funds except that the check or draft shall not bear the certificate of preaudit.

(c) For the purposes of this section, "special funds of individual schools" includes by way of illustration and not limitation funds realized from gate receipts of interscholastic athletic competition, sale of school annuals and newspapers, and dues of student organizations. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-449. Proceeds of insurance claims.

Moneys paid to a local school administrative unit pursuant to contracts of insurance against loss of capital assets through fire or casualty shall be used to repair or replace the damaged asset, or if the asset is not repaired or replaced, placed to the credit of the capital outlay fund for appropriation at some future time. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-450. School food services.

School food services shall be included in the budget of each local school administrative unit and the State Board of Education shall provide for school food services in the uniform budget format required by G.S. 115C-426. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-451. Reports to State Board of Education.

The State Board of Education shall have authority to require local school administrative units to make such reports as it may deem advisable with respect to the financial operation of the public schools. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§ 115C-452. Fines and forfeitures.

The clear proceeds of all penalties and forfeitures and of all fines collected in the General Court of Justice in each county shall be remitted by the clerk of the superior court to the county finance officer, who shall forthwith determine what portion of the total is due to each local school administrative unit in the county and remit the appropriate portion of the amount to the finance officer of each local school administrative unit. Fines and forfeitures shall be apportioned according to the projected average daily membership of each local school administrative unit as determined by and certified to the local school administrative units and the board of county commissioners by the State Board

of Education pursuant to G.S. 115C-430. (1975, c. 437, s. 1; 1981, c. 423, s. 1.)

§§ 115C-453 to 115C-457: Reserved for future codification purposes.

ARTICLE 32.

Loans from State Literary Fund.

§ 115C-458. Loans by State Board from State Literary Fund.

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of local boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants, maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096; 1981, c. 423, s. 1.)

§ 115C-429. Terms of loans.

Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed six percent (6%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the local board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the local board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094; 1981, c. 423, s. 1.)

§ 115C-460. How secured and paid.

At the January meeting of the board of education, before any installment shall be due on the next tenth day of February, the local board of education shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county or city school fund therefor, who, prior to the tenth day of February, shall pay over to the State Treasurer the amount then due. Upon failure of any local school administrative unit to pay any installment of principal or interest, or any part of either, when due, the State Treasurer, upon demand of the State Board of Education, shall bring action against the local board of education and board of county commissioners to compel the levy and collection of sufficient taxes to pay said installment of principal and accrued interest. The State Board of Education may accept payment of any or all of said notes and the interest accrued thereon before maturity. (1955, c. 1372, art. 11, s. 3; 1981, c. 423, s. 1.)

§ 115C-461. Loans by county board to school districts.

The county board of education, from any sum borrowed under the provisions of this Article, may make loans only to districts that shall have levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in 10 annual installments, with interest thereon at the same rate the county board of education is paying, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners.

All loans hereafter made to such districts shall be made upon the written petition of a majority of the committee of the district asking for the loan and authorizing the county board to deduct a sufficient amount from the local taxes to meet the indebtedness to the county board of education. Otherwise, the county board of education shall have no lien upon the local taxes for the repayment of this loan: Provided, this lien shall not lie against taxes collected or hereafter levied to pay interest and principal on bonds issued by or on behalf of the district. (1955, c. 1372, art. 11, s. 4; 1981, c. 423, s. 1.)

§ 115C-462. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission.

In any case where a loan has heretofore been made from the State Literary Fund or from any special building fund of the State to a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the Local Government Commission. (1955, c. 1372, art. 11, s. 5; 1981, c. 423, s. 1.)

§ 115C-463. Issuance of bonds as part of general refunding plan.

In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligation to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1955, c. 1372, art. 11, s. 6; 1981, c. 423, s. 1.)

§ 115C-464. Validating certain funding and refunding notes of counties.

The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to Article 24 of Chapter 136 of the Public Laws of 1923, or from special building funds pursuant to either Chapter 147 of the Public Laws of 1921, or Article 25 of Chapter 136 of the Public Laws of 1923, or Chapter 201 of the Public Laws of 1925, or Chapter 199 of the Public Laws of 1927, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being Chapter 81 of the Public Laws of 1927, as amended. (1955, c. 1372, art. 11, s. 7; 1971, c. 704, s. 12; 1981, c. 423, s. 1.)

§ 115C-465. Special appropriation from fund.

The State Board of Education may annually set aside and use out of the funds accruing in interest to the State Literary Fund, a sum not exceeding seventeen thousand five hundred dollars (\$17,500) to be used for giving directions in the preparation of proper plans for the erection of school buildings in providing inspection of such buildings as may be erected in whole, or in part, with money borrowed from said fund, and such other purposes as said Board may determine to secure the erection of a better type of school building and better administration of said fund. (1955, c. 1372, art. 11, s. 8; 1981, c. 423, s. 1.)

§ 115C-466. Loans not granted in accordance with G.S. 115C-458.

The State Board of Education, under such rules and regulations as it may adopt, may make loans from the State Literary Fund to any local board of education, when the State Board of Education finds as a fact that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115C-458, for the purpose of aiding in the erection and equipment of public school plants. Such a loan shall not constitute a credit obligation of the county. No warrant for the expenditure of money for a loan authorized under the provisions of this section shall be issued except upon the approval of the State Board of Education, and after a finding of fact by said Board that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115C-458, and that a dire emergency exists in the local school administrative unit applying for such loan. Loans made under the provisions of this section shall be made in accordance with the terms specified in G.S. 115C-459 and shall be evidenced by the note of the local board of education, executed by the chairman and the secretary of said board. The first installment of such loan, together with the interest then due, shall be paid by the local board of education on or before the tenth day of June in the fiscal year following the fiscal year in which the loan was made, and succeeding installments, together with accrued interest, shall be paid one each on or before the tenth day of June of each successive fiscal year until all amounts due on said loan shall have been paid. The provisions of G.S. 115C-460 shall not apply to loans made pursuant to the provisions of this section. (1959, c. 227; c. 764, s. 2; 1981, c. 423, s. 1.)

§ 115C-467. Pledge of nontax revenues to repayment of loans from State Literary Fund.

Any local board of education obtaining a loan from the State Literary Fund under the provisions of G.S. 115C-466 may, with the approval of the board of county commissioners, pledge to the repayment of such loan any available nontax revenues, including but not limited to, fines, penalties, and forfeitures. (1959, c. 764, s. 1; 1981, c. 423, s. 1.)

§§ 115C-468 to 115C-472: Reserved for future codification purposes.

ARTICLE 33.

Assumption of School District Indebtedness by Counties.

§ 115C-473. Method of assumption; validation of proceedings.

The county board of education, with the approval of the board of commissioners, and when the assumption of such indebtedness is approved at an election as hereinafter provided, if such election is required by the Constitution, may include in the debt service fund in the school budget all outstanding indebtedness for school purposes of every city, town, school district, school taxing district, township, city administrative unit or other political subdivision in the county, hereinafter collectively called "local districts", lawfully incurred in erecting and equipping school buildings necessary for the school term. The election on the question of assuming such indebtedness shall be called and held in accordance with the provisions of Chapter 159 of the General Statutes, known as "The Local Government Finance Act", insofar as the same may be made applicable, and the returns of such election shall be canvassed and a statement of the result thereof prepared, filed and published as provided in the Local Government Finance Act. No right of action or defense founded upon the invalidity of the election shall be asserted, nor shall the validity of the election be open to question in any court upon any ground whatever, except in an action or proceeding commenced within 30 days after the publication of such statement of result. When such indebtedness is taken over for payment by the county as a whole and the local districts are relieved of their annual payments, the county funds provided for such purpose shall be deducted from the debt service fund prior to the division of such fund among the schools of the county as provided in Article 31 of this Chapter.

The assumption, as herein provided, by any county, at any time prior to the 28th day of February, 1951, of the indebtedness of local districts for school purposes and all proceedings had in connection therewith are hereby in all respects ratified, approved, confirmed, and validated: Provided, that nothing herein shall prevent counties and local taxing districts from levying taxes to provide for the payment of their debt service requirements if they have not been otherwise provided for. (1955, c. 1372, art. 12, s. 1; 1981, c. 423, s. 1.)

§ 115C-474. Taxes levied and collected for bonds assumed to be paid into school debt service fund of county; discharge of sinking fund custodian.

In any county where the bonds of a local district have been assumed under the provisions of this Article, all taxes levied and collected for the purpose of paying the principal of and interest on said bonds, or for creating a sinking fund for the retirement of said bonds, shall be deposited in the school debt service fund of the county. The custodian of all moneys and other assets of a sinking fund created for the retirement of said bonds is hereby authorized to turn over such moneys and assets to the county treasurer, the county sinking fund commissioner or other county officer charged with the custodianship of sinking funds, and such custodian shall thereby be discharged from further responsibility for administration of and accounting for such sinking fund. (1955, c. 1372, art. 12, s. 2; 1981, c. 423, s. 1.)

§ 115C-475. Allocation to district bonds of taxes collected.

The collections of taxes levied for debt service on all taxable property of a county in which local district bonds have been assumed shall be proportionately allocated to each issue of such bonds. (1955, c. 1372, art. 12, s. 3; 1981, c. 423, s. 1.)

§§ 115C-476 to 115C-480: Reserved for future codification purposes.

ARTICLE 34.

Refunding and Funding Bonds of School Districts.

§ 115C-481. School district defined.

The term "school district" as used in this Article shall be deemed to include any special school taxing district, local tax district, special charter district, city administrative unit or other political subdivision of a county by which or on behalf of which bonds have been issued for erecting and equipping school buildings, or for refunding the same, and such bonds are outstanding. (1955, c. 1372, art. 13, s. 1; 1981, c. 423, s. 1.)

§ 115C-482. Continuance of district until bonds are paid.

Notwithstanding the provisions of any law which affect the continued existence of a school district or the levy of taxes therein for the payment of its bonds, such school district shall continue in existence with its boundaries unchanged from those established at the time of issuance of its bonds, unless such boundaries shall have been extended and thereby embrace additional territory subject to the levy of such taxes, until all of its outstanding bonds, together with the interest thereon, shall be paid. (1955, c. 1372, art. 13, s. 2; 1981, c. 423, s. 1.)

§ 115C-483. Funding and refunding of bonds authorized; issuance and sale or exchange; tax levy for repayment.

The board of commissioners of the county in which any such school district is located is hereby authorized to issue bonds at one time or from time to time

for the purpose of refunding or funding the principal or interest of any bonds of such school district then outstanding. Such refunding or funding bonds shall be issued in the name of the school district and they may be sold or delivered in exchange for or upon the extinguishment of the obligations or indebtedness refunded or funded. Except as otherwise provided in this Article, such refunding and funding bonds shall be issued in accordance with the provisions of Chapter 159 of the General Statutes, the Local Government Finance Act. The tax-levying body or bodies authorized by law to levy taxes for the payment of the bonds, the principal or interest of which shall be refunded or funded, shall levy annually a special tax on all taxable property in such school district sufficient to pay the principal and interest of said refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 3; 1981, c. 423, s. 1.)

§ 115C-484. Issuance of bonds by cities and towns; debt statement; tax levy for repayment.

In case the governing body of any city or town is the body authorized by law to levy taxes for the payment of the bonds of such district, whether the territory embraced in such district lies wholly or partly within the corporate limits of such city or town, such governing body of such city or town is hereby authorized to issue bonds at the time or from time to time for the purpose of refunding or funding the principal or interest of any bonds then outstanding which were issued by or on behalf of such school district. Except as otherwise provided in this Article, such refunding and funding bonds shall be issued in accordance with the provisions of the Local Government Bond Act, relating to the issuance of refunding and funding bonds under that act, and the provisions of the Local Government Finance Act, except in the following respects:

- (1) The bonds shall be issued in the name and on behalf of the school district by the governing body of such city or town.
- (2) It shall not be necessary to include in the ordinance authorizing the bonds, or in the notice required to be published after the passage of the ordinance, any statement concerning the filing of a debt statement, and, as applied to said bonds, G.S. 159-54 and G.S. 159-55 (the Local Government Bond Act,) shall be read and understood as if they contained no requirements in respect to such matters.
- (3) The governing body of such city or town shall annually levy and collect a tax ad valorem upon all the taxable property in such school district sufficient to pay the principal and interest of such refunding or funding bonds as the same become due. (1955, c. 1372, art. 13, s. 4; 1981, c. 423, s. 1.)

§§ 115C-485 to 115C-489: Reserved for future codification purposes.

ARTICLE 35.

Voluntary Endowment Fund for Public Schools.

§ 115C-490. Creation of endowment funds; administration.

Any local board of education is hereby authorized and empowered upon the passage of a resolution to create and establish a permanent endowment fund which shall be financed by gifts, donations, bequests or other forms of voluntary contributions. Any endowment fund established under the provisions of this Article shall be administered by the members of such board of education who, ex officio, shall constitute and be known as "The Board of Trustees of the

Endowment Fund of the Public Schools of County or City or Town" (in which shall be inserted the name of the county, city or town). The board of trustees so established shall determine its own organization and methods of procedure. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-491. Boards of trustees public corporations; powers and authority generally; investments.

Any board of trustees created and organized under this Article shall be a body politic, public corporation and instrumentality of government and as such may sue and be sued in matters relating to the endowment fund and shall have the power and authority to acquire, hold, purchase and invest in all forms of property, both real and personal, including, but not by way of limitation, all types of stocks, bonds, securities, mortgages and all types, kinds and subjects of investments of any nature and description. The board of trustees of said endowment fund may receive pledges, gifts, donations, devises and bequests, and may in its discretion retain such in the form in which they are made, and may use the same as a permanent endowment fund. The board of trustees of any endowment fund created hereunder shall have the power to sell any property, real, personal or choses in action, of the endowment fund, at either public or private sale. The board of trustees shall be responsible for the prudent investment of any funds or moneys belonging to the endowment fund in the exercise of its sound discretion without regard to any statute or rule of law relating to the investment of funds by fiduciaries. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-492. Expenditure of funds; pledges.

It is not the intent that such endowment fund created hereunder shall take the place of State appropriations or any regular appropriations, tax funds or other funds made available by counties, cities, towns or local school administrative units for the normal operation of the public schools. Any endowment fund created hereunder, or the income from same, shall be used for the benefit of the public schools of the county, city or town involved and to supplement regular and normal appropriations to the end that the public schools may improve and increase their functions, may enlarge their areas of service and may become more useful to a greater number of people. The board of trustees in its discretion shall determine the objects and purposes for which the endowment fund shall be spent. Nothing herein shall be construed to prevent the board of trustees of any such endowment fund established hereunder from receiving pledges, gifts, donations, devises and bequests and from using the same for such lawful school purposes as the donor or donors designate: Provided, always, that the administration of any such pledges, gifts, donations, devises and bequests, or the expenditure of funds from same, will not impose any financial burden or obligation on the State of North Carolina or any subdivisions of government of the State. The board of trustees may, with the consent of the donor of any pledges, transfer and assign such pledges as security for loans. This consent by the donor may be made at the time of the pledge or at any time before said pledges are paid off in full. It is the purpose of this provision to enable the board of trustees to have the immediate use of funds which the donor may desire to pledge as payable over a period of years. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-493. When only income from fund expended.

Where the donor of said pledges, gifts, donations, devises and bequests so provides, the board of trustees shall keep the principal of such gift or gifts intact and only the income therefrom may be expended. (1961, c. 970; 1981, c. 423, s. 1.)

§ 115C-494. Property and income of board of trustees exempt from State taxation.

All property received, purchased, contributed or donated to the board of trustees for the benefit of any endowment fund created hereunder and all donations, gifts and bequests received or otherwise administered for the benefit of said endowment fund, as well as the principal and income from said endowment fund, shall at all times be free from taxation, of any nature whatsoever, within the State. (1961, c. 970; 1981, c. 423, s. 1.)

§§ 115C-495 to 115C-499: Reserved for future codification purposes.

SUBCHAPTER VIII. LOCAL TAX ELECTIONS.**ARTICLE 36.*****Voted Tax Supplements for School Purposes.*****§ 115C-500. Superintendents must furnish boundaries of special taxing districts.**

It shall be the duty of superintendents to furnish tax listers at tax listing time the boundaries of each taxing district as provided in G.S. 115C-276(m). (1981, c. 423, s. 1.)

§ 115C-501. Purposes for which elections may be called.

(a) To Vote a Supplemental Tax. — Elections may be called by the local tax-levying authority to ascertain the will of the voters as to whether there shall be levied and collected a special tax in the several local school administrative units, districts, and other school areas, including districts formed from contiguous counties, to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget. When supplementary funds are authorized by the carrying of such an election, such funds may be used to employ additional teachers other than those allotted by the State, to teach any grades or subjects or for kindergarten instruction, to establish and maintain approved summer schools, to make the contribution to the Teachers' and State Employees' Retirement System of North Carolina for such teachers, or for any object of expenditure: Provided, that elections may be called to ascertain the will of the voters of an entire county, as to whether there shall be levied and collected a special tax on all the taxable property within the county for the purposes enumerated in this subsection. In such event, the supplemental tax shall be apportioned among the local school administrative units in the county pursuant to G.S. 115C-430.

(b) To Increase a Supplemental Tax Rate. — Elections may be called in any school area which has previously voted a supplemental tax of less than the maximum for the purpose of increasing the rate of tax previously voted but not to exceed the maximum.

(c) To Enlarge City Administrative Units. — Elections may be called in any districts, or other school areas, of a county administrative unit to ascertain the will of the voters in such districts or other school areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such districts, or other school areas, with such city administrative unit, and whether after such enlargement of the city administrative unit there shall be levied in such other districts, or other school area or areas, so consolidated with the city administrative unit the same school taxes as shall be levied in the other portion of the city administrative unit.

(d) To Supplement and Equalize Educational Advantages. — Elections may be called in any area of a county administrative unit which is enclosed in one common boundary line to ascertain the will of the voters as to whether there shall be levied and collected a special tax to supplement and equalize the standards on which the schools in such areas are operated, and at the same time repeal any special taxes heretofore voted by any parts of such area.

(e) To Abolish a Special School Tax. — Elections may be called in any local school administrative unit, district or other school area which has previously voted a supplemental tax, to ascertain the will of the people as to whether such tax shall be abolished.

(f) To Vote School Bonds. — Boards of county commissioners are authorized as provided by law to call elections to ascertain the will of the voters as to whether bonds for school purposes may be issued.

(g) To Provide a Supplemental Tax on a Countywide Basis after Petition for Consolidation of City or County Administrative Units. — Elections may be called for an entire county on the question of a special tax to supplement the funds from State and county allotments and thereby operate schools of a higher standard by supplementing any item of expenditure in the school budget, where the boards of education of all the city administrative units in said county have petitioned the county board of education for a consolidation with the county administrative unit pursuant to the provisions of the first paragraph of G.S. 115C-70(a) and prior to the approval of said petitions by the county and State boards of education. In which event, and provided the petitions so specify, if said election for a countywide supplemental tax fails to carry, said petitions may be withdrawn and any existing supplemental tax theretofore voted in any of the city administrative units involved or in the county administrative unit shall not be affected. If the vote for the countywide supplemental tax carries, said tax shall not be levied unless and until the consolidation of the units involved shall be completed according to the requirements of the first paragraph of G.S. 115C-70(a).

(h) To Annex or Consolidate Areas or Districts from Contiguous Counties and to Provide a Supplemental School Tax in Such Annexed Areas or Consolidated Districts. — An election may be called in any districts or other school areas, from contiguous counties, as to whether the districts in one county shall be enlarged by annexing or consolidating therewith any adjoining districts, or other school area or areas from an adjoining county, and if a special or supplemental school tax is levied and collected in the districts of the county to which the territory is to be annexed or consolidated, whether upon such annexation or consolidation there shall be levied and collected in the territory to be annexed or consolidated the same special or supplemental tax for schools as is levied and collected in the districts in the other county. If such election carries, the said special or supplemental tax shall be collected pursuant to G.S. 115C-511 and remitted to the local school administrative unit on whose behalf such special and supplemental tax is already levied: Provided, that notwithstanding the provisions of G.S. 115C-508, if the notice of election clearly so states, and the election shall be held prior to August 1, the annexation or consolidation shall be effective and the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next

preceding such elections. (1955, c. 1372, art. 14, s. 1; 1957, c. 1066; c. 1271, s. 1; 1959, c. 573, s. 9; 1961, c. 894, s. 2; c. 1019, s. 1; 1975, c. 437, ss. 2-4; 1981, c. 423, s. 1.)

§ 115C-502. Maximum rate and frequency of elections.

(a) A tax for supplementing the public school budget shall not exceed fifty cents (50¢) on the one-hundred-dollar (\$100.00) value of property subject to taxation by the local school administrative unit: Provided, that in any local school administrative unit, district, or other school area having a total population of not less than 100,000 said local annual tax that may be levied shall not exceed sixty cents (60¢) on one-hundred-dollars (\$100.00) valuation of said property.

(b) If a majority of those who vote in any election called pursuant to the provisions of this Article do not vote in favor of the purpose for which such election is called, another election for the same purpose shall not be called for and held in the same local school administrative unit, district, or area until the lapse of six months after the prior election. However, the foregoing time limitation shall not apply to any election held in a local school administrative unit, district, or other school area which is larger or smaller than the local school administrative unit, district, or area in which the prior election was held, or to any election held for a different purpose than the prior election. (1955, c. 1231; c. 1372, art. 14, s. 2; 1957, c. 1271, s. 2; 1959, c. 573, s. 10; 1975, c. 437, s. 5; 1981, c. 423, s. 1.)

§ 115C-503. Who may petition for election.

Local boards of education may petition the board of county commissioners for an election in their respective local school administrative units or for any school areas therein.

In county administrative units, for any of the purposes enumerated in G.S. 115C-501, the school committee of a district, or a majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding 12 months in a school area less than a district, and which area is adjacent to a city unit or a district to which it is desired to be annexed and which can be included in a common boundary with said unit or district, or the committee of a district formed from portions of two or more contiguous counties, may petition the county board of education for an election.

The school committee of a district, or the majority of the committees in an area including a number of districts, or a majority of the qualified voters who have resided for the preceding 12 months in a school area less than a district, and which area, district, districts or territory is adjacent to a district or districts in a contiguous county to which it is desired to be annexed or consolidated, and with the approval of the county board of education of the contiguous county to which it is desired to be annexed or consolidated, may petition the county board of education for an election. (1955, c. 1372, art. 14, s. 3; 1961, c. 1019, s. 2; 1981, c. 423, s. 1.)

§ 115C-504. Necessary information in petitions.

The petition for an election shall contain such of the following information as may be pertinent to the proposed election:

- (1) Purpose for calling the proposed election.
- (2) A legally sufficient description of the area, by metes and bounds or otherwise, in which the election is requested.

- (3) The maximum rate of tax which is proposed to be levied. This subdivision shall not apply to a petition for an election to enlarge a city administrative unit.
- (4) If the petition is for an election to enlarge a city administrative unit, it shall state therein that, if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement, such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and that there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.
- (5) If the petition for an election is to supplement and equalize educational advantages, and if any school districts in the area in which it is proposed to vote such a tax have heretofore voted a supplementary tax, the petition and the notice of election shall state that in the event such election is carried, it will repeal all local taxes heretofore voted in any district except those in effect for debt service in any district, unless such debt service obligation is assumed by the county or otherwise provided for. (1955, c. 1372, art. 14, s. 4; 1957, c. 1271, ss. 3-5; 1981, c. 423, s. 1.)

§ 115C-505. Boards of education must consider petitions.

The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration. If, in the discretion of the board of education, the petition for an election shall be approved, it shall be endorsed by the chairman and the secretary of the board and a record of the endorsement shall be made in the minutes of the board. Petitions for an election to enlarge a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected.

Local boards of education shall have no discretion in granting an election to abolish a special school tax in any local school administrative unit, or district, or other school area, which has previously voted a supplemental tax, whenever a majority of the qualified voters residing in said local school administrative unit, district or school area shall petition for an election. When such a petition, showing the proper number of names of qualified voters, is presented to a board of education, it is hereby made mandatory that such petition shall be granted and the election held. If at the election a majority of those in the district who have voted thereon have voted "against local tax", the tax shall be deemed revoked and shall not be levied: Provided, that in Alexander, Anson, Beaufort, Buncombe, Carteret, Catawba, Chatham, Chowan, Cleveland, Craven, Currituck, Davidson, Duplin, Franklin, Gates, Greene, Henderson, Hoke, Hyde, Iredell, Jackson, Johnston, Lenoir, Martin, Mecklenburg, Moore, Nash, Onslow, Pamlico, Pitt, Randolph, Richmond, Robeson, Rockingham, Transylvania, Vance, Wake, Warren and Wilkes Counties, petition of twenty-five percent (25%) of the number of voters in the election creating said special tax district, said petition to be signed by qualified voters residing in such special tax district, shall be sufficient.

The provisions of this section as to abolishing local tax districts shall not be applied when such local tax district is in debt in any sum whatever, or has obligated or committed its resources in any contractual manner: Provided, that no election for revoking a local tax in any local tax district shall be ordered and

held in the district within less than one year from the date of the election at which the tax was voted and the district established, nor at any time within less than one year after the date of the last election on the question of revoking the tax in the district; and no petition seeking to revoke a school tax shall be approved by a board of education more often than once a year.

If the petition for an election in an area containing a number of districts is signed by the school committeeman of at least a majority of the school districts within a proposed special school taxing area, the board of education in such administrative unit shall endorse such petition and the election shall be held. (1955, c. 1372, art. 14, s. 5; 1957, c. 1100; 1981, c. 423, s. 1.)

§ 115C-506. Action of board of county commissioners or governing body of municipality.

Petitions requesting special school elections and bearing the approval of the board of education of the local school administrative unit shall be presented to the board of county commissioners, and it shall be the duty of said board of county commissioners to call an election and fix the date for the same: Provided, that the board of education requesting the election may, for any reason deemed sufficient by said board which shall be specified and recorded in the minutes of the board, withdraw the petition before the close of the registration books, and if the petition be so withdrawn, the election shall not be held unless by some other provision of law the holding of such election is mandatory. In the case of a city administrative unit in any incorporated city or town and formed from portions of contiguous counties, said petition shall be presented to the governing body of the city or town situated within, coterminous with, or embracing such city administrative unit, and the election shall be ordered by said governing body, and said governing body shall perform all the duties pertaining to said election performed by the board of county commissioners in elections held under this Article. (1955, c. 1372, art. 14, s. 6; 1959, c. 72; 1981, c. 423, s. 1.)

§ 115C-507. Rules governing elections.

All elections under this Chapter shall be held and conducted by the appropriate city or municipal board of elections.

If the purpose of the election is to enlarge a city administrative unit, the notice of election shall include the following: a statement of the purpose of the election; a legal description of the area within which the election is to be held; and a statement that if a majority of those who shall vote in the area proposed to be consolidated with the city administrative unit shall vote in favor of such enlargement such area shall be consolidated with the city administrative unit, effective July 1 next following such election, and there shall thereafter be levied in such area so consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit, including any tax levy to provide for the payment of school bonds theretofore issued by or for such city administrative unit or for all or some part of the school area annexed to such city administrative unit, unless payment of such bonds has otherwise been provided for.

The notice of the election shall be given as provided in G.S. 163-33(8) and in addition include a legal description of the area within which the election is to be held, and, if any additional tax is proposed to be levied, the maximum rate of tax to be levied which shall not exceed the maximum prescribed by this Article, and the purpose of the tax.

No new registration of voters is required, but the board of elections, in its discretion, may use either Method A or Method B set forth in G.S. 163-288.2 in activating the voters in the territory.

The ballot in such election shall contain the words "FOR local tax and AGAINST local tax" except when the election is held under subsection (c) of G.S. 115C-501, in which case the ballots shall contain the words "FOR enlargement of the City Administrative Unit and school tax of the same rate", and "AGAINST enlargement of the City Administrative Unit and school tax of the same rate".

The elections shall be held in accordance with the applicable provisions of Chapter 163 and the expense of the election shall be paid by the board of education of the administrative unit in which the election is held, provided that when territory is proposed to be added to a city administrative unit, that unit shall bear the expense.

No election held under this Article shall be open to question except in an action or proceeding commenced within 30 days after the board of elections has certified the results. (1955, c. 1372, art. 14, s. 7; 1957, c. 1271, ss. 6, 7; 1981, c. 423, s. 1.)

§ 115C-508. Effective date; levy of taxes.

(a) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of the enlargement of a city administrative unit, such enlargement shall become effective July 1 next following such election; and thereafter there shall be levied and collected in the area consolidated with the city administrative unit the same school taxes as shall be levied in the other portions of the city administrative unit.

(b) If, in any election authorized by this Article, a majority of the voters voting in such election vote in favor of a supplemental tax, or in favor of the increase of a supplemental tax, or in favor of a tax to supplement and equalize educational advantages, the tax so authorized shall be levied and collected beginning with the fiscal year commencing July 1 next following such election. (1957, c. 1271, s. 8; 1981, c. 423, s. 1.)

§ 115C-509. Conveyance of school property upon enlargement of city administrative unit.

Before any election is called to enlarge a city administrative unit, if any school property is located in the area proposed to be consolidated with the city administrative unit, the board of education of such city administrative unit and the board of education of the county administrative unit concerned shall agree with each other as to the school property to be conveyed and transferred to the board of education of the city administrative unit if a majority of the voters voting in the election vote in favor of such enlargement. And, if such enlargement is authorized by such election, the board of education of the county administrative unit shall, within 10 days after July 1 next following such election, convey and transfer to the board of education of the city administrative unit the property so agreed to be conveyed and transferred. (1957, c. 1271, s. 8; 1981, c. 423, s. 1.)

§ 115C-510. Elections in districts created from portions of contiguous counties.

Districts already created and those that may be created from portions of two or more contiguous counties may hold elections under this Article to be incorporated or to vote a special local tax therein for the purposes enumerated in G.S. 115C-501.

Elections for either purpose must be initiated by petitions from the portion of each county included in the district, or the proposed district. In districts

already created, the majority of the committeemen must sign the petition. In proposed districts, the petition must be signed by fifteen percent (15%) of the registered voters who reside in the area. When the petitions shall have been approved by each of the boards of education of such contiguous counties, they shall then be presented by each of said boards of education to their respective boards of county commissioners.

The boards of commissioners of each of the contiguous counties, in compliance with the provisions of this Article relating to the conduct of local tax elections, then shall call upon the county board of elections to hold an election in that portion of the proposed district lying in its county. Election returns shall be made from each portion of the proposed district to the board of commissioners ordering the election in that portion, and the returns shall be canvassed and recorded as required in this Article for local tax districts.

If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for incorporation, the election shall be determined to have carried in the whole district, and shall be so recorded in the records of the board of county commissioners in each county in which the district is located.

If the proposition submitted to the voters in the election is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For incorporation" and "Against Incorporation". If the election for incorporation is carried, the district is thereby incorporated and shall possess all the authority of incorporated districts.

In case the election carried in each portion of the proposed district, the several county boards of education concerned shall each pass a formal order consolidating the territory into one joint local tax district, which shall be and become a body corporate by the name and style of "..... Joint Local Tax School District of Counties". The county board of education having the largest school census and the largest area in the part of the joint local tax district lying in its county shall determine the location of the schoolhouse; but if the largest census and largest area do not both lie in the same county, then the county boards shall jointly select the site for the building; and in case of a disagreement they shall submit the question to a board of arbitration consisting of three members, one member to be named by each board of education if three counties are concerned, or if there are but two counties, then each board shall choose one member and the two so named shall select the third member. The decision of this board of arbitration shall be binding on all county boards of education concerned.

The school committee shall consist of five members, three of whom shall be appointed by the board of education of the county in which the building is to be situated and two to be appointed by the other county or counties, but the terms of office shall be so arranged that not more than two members will retire in any one year. The committee shall officially exercise such corporate powers as are conferred by this section. This committee shall have all the powers and duties of committees of local tax districts, and in addition thereto it shall adopt a corporate seal and have the power to sue and be sued in its corporate name. The committee shall have the power to determine the rate of local taxes to be levied in said joint district, not exceeding the rate authorized by the voters of the district, and when the committee shall have so determined the rate of local taxes to be levied in said joint district and shall have certified same to the boards of commissioners of the several counties from which said joint district is created, the said boards of county commissioners, and each of them, shall levy said rate of local taxes within the portion of said joint district lying within their respective counties; and the taxes so levied shall be collected in the several counties as other taxes are collected therein, and shall be paid over by the officers collecting the same to the treasurer or other fiscal agent of the county in which the schoolhouse is located, or is to be located, to be by him placed to the credit of the joint district.

The committee shall have as full authority to call and hold elections for the voting of bonds of the district as is conferred upon boards of education and boards of commissioners. In calling the election for a bond issue, no petition of the county board of education shall be necessary; but the election shall be called and held by the school committee of the incorporated local tax school district under as ample authority as is conferred upon both county boards of education and boards of commissioners. When bonds of the district have been voted under authority of this section, they shall be issued subject to the limitations of the Local Government Finance Act in the corporate name of the district, signed by the chairman and secretary of the school committee, sold by the school committee, and the proceeds thereof deposited with the treasurer of the county board of education of the county in which the school building is, or is to be, located, to be placed to the credit of the joint district, and the taxes for the payment of principal and interest shall be levied and collected as provided hereinabove for the levy and collection of local taxes: Provided, that certified copies of the bond orders and resolutions shall be recorded on the minutes of the board of commissioners of each county constituting a part of the joint school district.

The building of all schoolhouses in such joint local tax districts shall be effected by the county board of education of the county in which the building is to be located under authority of law governing the erection of school buildings by county boards of education. It shall be lawful for the boards of education in the other county or counties to contribute to the cost of the building in proportion to the number of children shown by the official census to be resident within that part of the joint district lying within each county respectively. If the building is to be erected from moneys borrowed from the State Literary Fund or from county taxation, then each county board of education shall contribute to its construction in the proportion set out above and pay over its contribution to the treasurer of the county board having control of the erection of the building: Provided, it shall be lawful for the county board that controls the erection of the building to borrow from the State and lend to the district the full amount of the cost of the building in cases where the entire amount, or part of the amount, is to be repaid by the district from district funds.

All district funds of a joint local tax district shall be kept distinct from all other funds, placed to the credit of the district, and expended as other local tax or district bond funds are lawfully disbursed.

The county board of education and county superintendent of schools of the county in which the schoolhouse is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.

The committee of the joint school district shall prepare a budget annually in accordance with the law governing budgets in which the committee will indicate objects and items of expenditure which are proposed to be made from the collection of the special tax of the district. This budget shall show the proportionate part of the expense to be contributed by each county, which part shall be ascertained on the basis of the proportions of the total district school census living in each respective county. When this budget is completed by the committee of the joint district, a copy of it shall be filed with the county board of education of each county, and it shall be the duty of each board of education, if it approves the district budget, to incorporate it in the county budget to be submitted to the board of commissioners of each county. Each of the several county boards of education is hereby directed to pay over its proportionate part of the district budget, when and as collected, to the treasurer of the board of education of the county in which the school plant is located for the purposes for which it has been levied and collected.

All districts formed from portions of contiguous counties before the ratification of this Article are hereby authorized and empowered to exercise all the

powers and privileges conferred by this Article. (1955, c. 1372, art. 14, s. 8; 1981, c. 423, s. 1.)

§ 115C-511. Levy and collection of taxes.

(a) If a local school administrative unit or district has voted a tax to operate schools of a higher standard than that provided by State and county support, the board of county commissioners of each county in which the local school administrative unit is located is authorized to levy a tax on all property having a situs in the local school administrative unit for the purpose of supplementing the local current expense fund, the capital outlay fund, or both.

(b) Before April 15 of each year, the tax supervisor of each county in which the local school administrative unit is located shall certify to the superintendent of schools an estimate of the total assessed value of property in the county subject to taxation on behalf of the local school administrative unit and any districts therein pursuant to this Article. The board of education, in the budget it submits to the board of county commissioners, shall request the rate of ad valorem tax it wishes to have levied on its behalf as a school supplemental tax, not in excess of the rate approved by the voters. The board of county commissioners may approve or disapprove this request in whole or in part, and may levy such rate of supplemental tax as it may find to be in the best interests of the taxpayers and the public schools, not in excess of the rate requested by the board of education. Upon approving a supplemental tax levy pursuant to this section, the board of county commissioners shall cause the school supplemental tax to be computed for all property subject thereto. The taxes thus computed shall be shown separately on the county tax receipts for the fiscal year, and the county shall collect the school supplemental tax in the same manner that county taxes are collected. Collections shall be remitted to the local school administrative unit within 10 days after the close of each calendar month. Partial payments shall be proportionately divided between the county and the local school administrative unit. The board of county commissioners may, in its discretion, deduct from the proceeds of the school supplemental tax the actual additional cost to the county of levying, computing, billing, and collecting the tax.

(c) It shall be unlawful for any part of a tax levied pursuant to this Article to be used for any purpose other than those purposes authorized by the election in the unit or district. (1955, c. 1372, art. 14, s. 9; 1965, c. 584, s. 12; 1975, c. 437, s. 6; 1981, c. 423, s. 1.)

§§ 115C-512 to 115C-516: Reserved for future codification purposes.

SUBCHAPTER IX. PROPERTY.

ARTICLE 37.

School Sites and Property.

§ 115C-517. Acquisition of sites.

Local boards of education may acquire suitable sites for schoolhouses or other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair

shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be conclusive: Provided, that not more than a total of 50 acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290; 1981, c. 423, s. 1; c. 1127, s. 78.)

Editor's Note. — Session Laws 1981, c. 919, s. 11, amended § 115-125, which was similar to this section, by substituting "Chapter 40A" for "Article 2, of Chapter 40" in the second sentence. Former Chapter 40, Eminent Domain was repealed by Session Laws 1981, c. 919, s. 1, and replaced by present Chapter 40A.

Effect of Amendments. — The 1981 amendment, effective Jan. 1, 1981, substituted "Chapter 40A" for "Article 2, Chapter 40" near the end of the section.

Session Laws 1981, c. 1127, s. 89, contains a severability clause.

§ 115C-518. Sale, exchange or lease of school property; easement and rights-of-way.

(a) When in the opinion of any local board of education, or the use of any building, building site, or other real property owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property at public auction. Such sale shall be held on the property to be sold or at the courthouse door in the county in which such property is located, and shall be advertised and otherwise conducted as is prescribed by statute for judicial sales of real property. The sale shall then remain open for 10 days to permit the making of an upset bid. The resale of such property following such upset bid, and the procedure therefor shall be as prescribed by statute for judicial sales of real property. If the time for making an upset bid shall expire without such bid having been made, the board may confirm the sale if it deems the highest bid to be an adequate price. Upon confirmation of the sale by the board, the chairman and the secretary of the board shall execute a deed to the purchaser of the property upon his compliance with his bid. Confirmation of the sale by the clerk of the superior court shall not be required. The proceeds of the sale shall be paid to the treasurer of the school fund of such local school administrative unit, and shall be used either to reduce the bonded indebtedness of such local school administrative unit or for capital outlay purposes.

(b) When in the opinion of any local board of education, the use of any property, other than real property, owned or held by such board is unnecessary or undesirable for public school purposes, the board may sell such property either through the facilities of the North Carolina Department of Administration or at public auction.

If the property is to be sold at public auction, the sale shall be held at that place within that local school administrative unit and at that time which are designated by the board. A notice of sale shall be published at least once, not less than seven nor more than 15 days before the date of the sale, in a paper of general circulation in the county where the personal property is to be sold. The notice of sale shall adequately identify the property to be sold so as to acquaint prospective bidders with the nature and location of the property and shall set out the date, time, place and terms of sale.

The personal property shall be present at the time and place of the sale, unless the board determines that the nature, condition or use of the property

makes it impractical to have the property present. If the property is not to be present at the time and place of sale, reasonable opportunity shall be afforded to prospective buyers to inspect the property prior to the sale, and the notice of sale shall include notice of the time and place where an inspection of the property may be made.

The board shall designate the person to conduct the sale. If the person conducting the sale is an officer or employee of the board, he shall receive no additional compensation for his services in conducting the sale; any other person shall receive such fee as may be agreed upon with the board but in no case to exceed five percent (5%) of the proceeds of the sale.

The sale may be postponed when there are no bidders; or when in the judgment of the person conducting the sale the number of prospective bidders is substantially decreased by inclement weather or by other casualty; or when the person designated to conduct the sale is unable to hold the sale because of illness or other good reason; or when other good cause exists. If the sale is postponed, the board shall readvertise and schedule and hold the sale at a later time, subject to the same conditions governing the originally scheduled sale.

Title to the property so sold shall not pass by reason of such sale until the sale has been confirmed by the board and the purchaser has complied with the terms of his bid. The proceeds of such sale shall be paid to the treasurer of the school fund of such local school administrative unit.

(c) If in the opinion of the board the highest bid at any sale or resale of real or personal property sold pursuant to the provisions of this section is not adequate, such bid may be rejected and the property may again be advertised for sale as provided in this section, or may be sold by the board at a private sale for a price in excess of the highest bid at such public sale so long as such private sale is consummated within a period of one year from the date of the initial public offering.

Any sale of real property at private sale made prior to May 1, 1959, is hereby validated, so long as the real property so sold was first advertised for sale at public auction as provided by this section and the price received therefor was in excess of the highest bid received at such public offering.

(d) In the acquisition by it of any property for public school purposes any local board of education may exchange therefor, as full or partial payment therefor, any property owned or held by it, without compliance with the provisions of this section: Provided, that for at least 10 days before any exchange of real property shall be consummated, the terms of such proposed exchange shall be filed in the office of the superintendent of schools of such local school administrative unit and in the office of the clerk of the superior court in the county in which such property is located, and a notice thereof published one or more times in any newspaper having a general circulation in the local school administrative unit at least 10 days before the consummation of said exchange.

(e) When in the opinion of any local board of education, the use of any property owned or held by it is unnecessary or undesirable for public school purposes, but the sale of such property is not practicable or in the public interest, such board may in its discretion enter into an agreement with any other person, firm or corporation for the lease of such property to such person, firm or corporation for a term not in excess of one year, upon such terms and conditions as the board shall deem advisable and in the public interest. Upon a two-thirds vote of the board that such is in the public interest and with the approval of the board's tax levying authority, the board may enter into an agreement for the lease of such property for a term in excess of one year but for not more than 10 years: Provided, however, the proceeds of such lease authorized herein shall be used either to reduce the bonded indebtedness of such local school administrative unit or for capital outlay purposes. Nothing in this subsection shall invalidate any local act authorizing the lease of any such property or in any way limit the authority of local boards of education to enter into leases with other governmental units pursuant to G.S. 160A-274.

(f) In addition to the foregoing, local boards of education are hereby authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporation to furnish utility services to school property, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks.

(g) Sale, lease, exchange and joint use of governmental property by a local school administrative unit is subject to the provisions of G.S. 160A-274. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395; 1975, c. 264; c. 879, s. 46; 1977, c. 803; 1981, c. 423, s. 1.)

Local Modification. — Hyde: 1981, c. 877.

§ 115C-519. Deeds to property.

All deeds to school property shall, after registration, be delivered to the superintendent of the local school administrative unit in which the property is located and he shall provide a safe place for preserving all such deeds. (1955, c. 1372, art. 15, s. 3; 1981, c. 423, s. 1.)

§ 115C-520. Vehicles owned by boards of education.

All school buses, trucks, automobiles and other motor vehicles owned by local boards of education and used for transporting pupils to and from school or used by other school personnel in the performance of their work, shall be exempt from taxation, but all such vehicles shall be duly registered in the Division of Motor Vehicles as provided in G.S. 20-84. (1955, c. 1372, art. 15, s. 4; 1975, c. 716, s. 5; 1981, c. 423, s. 1.)

§ 115C-521. Erection of school buildings.

(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47(10) and 115C-301.

(b) It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of such buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for such school, then such local board of education is authorized to acquire and utilize as temporary classrooms for the operation of such school, relocatable or mobile classroom units, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which such school is located. The acquisition and installation of such units shall be subject in all respects to the provisions

of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

(c) The building of all new schoolhouses and the repairing of all old schoolhouses shall be under the control and direction of, and by contract with, the board of education in which such building and repairing is done. Boards of education shall not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor: Provided, that this subsection shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of said board.

In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practicable.

In the case of any school buildings erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under such rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of said loan or grant, until such completed buildings, erected or repaired, in whole or in part, from such loan or grant funds, shall have been approved by a designated agent of the State Board of Education.

Upon such approval by the State Board of Education, the State Treasurer is authorized to pay the balance of the loan or grant to the treasurer of the local school administrative unit for which said loan or grant was made.

(d) Local boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the said board: Provided, that the board of education of a local school administrative unit, with the approval of the board of county commissioners is authorized to appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining local school administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of said boards, whereby children from the administrative unit making such appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to such property shall be vested in the local board of education of the county embracing such former special charter district. (1955, c. 1372, art. 15, ss. 5-7; 1969, c. 1022, s. 1; 1981, c. 423, s. 1; c. 638, s. 1.)

Effect of Amendments. — Session Laws 1981, c. 638, amendment added the second paragraph of subsection (c).

§ 115C-522. Provision of equipment for buildings.

(a) It shall be the duty of local boards of education to purchase or exchange all supplies, equipment and materials in accordance with contracts made by or with the approval of the Department of Administration. Title to instructional supplies, office supplies, fuel and janitorial supplies, enumerated in the current expense fund budget and purchased out of State funds, shall be taken in the name of the local board of education which shall be responsible for the custody and replacement: Provided, that no contracts shall be made by any local school administrative unit for purchases unless provision has been made in the budget of such unit to provide payment therefor, or unless surplus funds are on hand to pay for same, and in order to protect the State purchase contracts, it is hereby made the duty upon the part of the governing authorities of such local units to pay for such purchases promptly in accordance with the terms of the contract of purchase.

(b) It shall be the duty of the local boards of education to provide suitable school furniture and apparatus, as provided in G.S. 115C-521 (b).

(c) It shall be the duty of local boards of education and tax-levying authorities to provide suitable supplies for the school buildings under their jurisdictions. These shall include, in addition to the necessary instructional supplies, proper window shades, blackboards, reference books, library equipment, maps, and equipment for teaching the sciences.

Likewise, it shall be the duty of said boards of education and boards of county commissioners to provide every school with a good supply of water, approved by the Department of Human Resources, and where such school cannot be connected to water-carried sewerage facilities, there shall be provided sanitary privies for the boys and for the girls according to specifications of the Commission for Health Services. Such water supply and sanitary privies shall be considered an essential and necessary part of the equipment of each public school and may be paid for in the same manner as desks and other essential equipment of the school are paid for. (1955, c. 1352, art. 5, s. 35; art. 15, s. 8; 1965, c. 840; 1973, c. 476, s. 128; 1981, c. 423, s. 1.)

Cross References. — As to exception for school food services, see § 115C-264.

§ 115C-523. Care of school property.

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

If any child in school shall carelessly or willfully damage school property, the teacher or principal shall report the damage to the parent, and if the parent refuses to pay the cost of repairing the same, the teacher or principal shall report the offense to the superintendent of schools.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7; 1981, c. 423, s. 1.)

§ 115C-524. Repair of school property.

(a) Repair of school buildings is subject to the provisions of G.S. 115C-521(c) and (d).

(b) It shall be the duty of local boards of education and tax-levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all committeemen, principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage: Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G.S. 115C-263 and 115C-264, local boards of education shall have authority to adopt rules and regulations by which school buildings, including cafeterias and lunchrooms, may be used for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253; 1981, c. 423, s. 1.)

§ 115C-525. Fire prevention.

(a) Duty of Principal Regarding Fire Hazards. — The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

- (1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.
- (2) Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wiring, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.
- (3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.
- (4) Every principal shall make certain that all supplies, such as oily rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.

- (5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.
- (6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G.S. 115C-525(b).

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G.S. 115C-525(b). It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections.

(b) Inspection of Schools for Fire Hazards; Removal of Hazards. — Every public school building in the State shall be inspected every four months in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 90 days apart:

- (1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in G.S. 115C-525(a)(1) through (5) exist, and to insure that all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the persons making the inspection shall also furnish a copy of the report to the superintendent of schools; the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.
- (2) The board of county commissioners of each county shall designate the persons to make the inspections and reports required by subdivision (1) of this subsection. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified persons, but no person shall make any electrical inspection unless he shall be qualified as required by G.S. 153A-351.1 and Section 7 of Chapter 531 of the 1977 Session Laws. Nothing in this section shall be construed as prohibiting two or more counties from designating the same persons to make the inspections and reports required by subdivision (1) of this subsection. The board of county commissioners shall compensate or provide for the compensation of the persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof: Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.
- (3) It shall be the duty of the Commissioner of Insurance, the Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may

deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.

- (4) It shall be the duty of each principal to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.
- (5) It shall be the duty of each superintendent of schools to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection and not removed or corrected by the principals as required by subdivision (4) of this subsection are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard.

(c) Liability for Failure to Perform Duties Imposed by G.S. 115C-288 and 115C-525(a) or 115C-525(b). — Any person willfully failing to perform any of the duties imposed by G.S. 115C-288, 115C-525(a) or 115C-525(b) shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14; 1981, c. 423, s. 1.)

§ 115C-526. Reward for information leading to arrest of persons damaging school property.

Local boards of education are authorized and empowered to offer and pay rewards in an amount not exceeding three hundred dollars (\$300.00) for information leading to the arrest and conviction of any persons who willfully deface, damage, destroy or commit acts of vandalism or larceny of, the property belonging to the public school system under the jurisdiction of and administered by any local board of education. (1967, c. 369; 1973, c. 1216; 1975, c. 437, s. 7; 1981, c. 423, s. 1.)

§ 115C-527. Use of schools and other public buildings for political meetings.

The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of biennial precinct meetings and county and district conventions: Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities. (1975, c. 465; 1981, c. 423, s. 1.)

§§ 115C-528 to 115C-532: Reserved for future codification purposes.

ARTICLE 38.

State Insurance of Public School Property.

§ 115C-533. Duty of State Board to operate insurance system.

The State Board shall have the duty to manage and operate a system of insurance for public school property. (1955, c. 1372, art. 2, s. 2; 1957, c. 541, s. 11; 1961, c. 969; 1963, c. 448, ss. 24, 27; c. 688, ss. 1, 2; c. 1223, s. 1; 1965, c. 1185, s. 2; 1967, c. 643, s. 1; 1969, c. 517, s. 1; 1971, c. 704, s. 4; c. 745; 1973, c. 476, s. 138; c. 675; 1975, c. 699, s. 2; c. 975; 1979, c. 300, s. 1; c. 935; 1981, c. 423, s. 1.)

§ 115C-534. Duty to insure property.

(a) The board of every local school administrative unit in the public school system of this State, in order to safeguard the investment made in public schools, shall:

- (1) Insure and keep insured to the extent of not less than seventy-five percent (75%) of the current insurable value as determined by the insurer and the insured of each of its insurable buildings against fire, lightning and the perils embraced in extended coverage.
- (2) Insure and keep insured adequately the equipment and contents of said building.

(b) The tax-levying authority for each local school administrative unit shall appropriate funds necessary for compliance with the provisions of subsection (a).

(c) Willful failure to comply with the provisions of (a) and (b) above, is declared a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) or imprisonment for not more than 30 days. Every 24 hours without such insurance constitutes a separate offense. (1957, c. 1040; 1981, c. 423, s. 1.)

§ 115C-535. Authority and rules for organization of system.

The State Board of Education is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school property. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The Board shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in its opinion is necessary to insure and protect effectively public school property, and it shall fix their compensation with the approval of the Personnel Commission. (1955, c. 1372, art. 16, s. 1; 1981, c. 423, s. 1.)

§ 115C-536. Public School Insurance Fund; decrease of premiums when fund reaches five percent of total insurance in force.

There shall be set up in the books of the State Treasurer a fund to be known and designated as the "Public School Insurance Fund," which fund hereafter in G.S. 115C-535 to 115C-542 is referred to as "the Fund." In order to provide adequate reserves against losses which may be incurred on account of the risks

insured against as provided in G.S. 115C-535 to 115C-542 and to provide payment for such losses as may be incurred therein, there is hereby appropriated to the Fund the sum of two million dollars (\$2,000,000), which shall be paid from and charged to the State Literary Fund as set up and defined in this Chapter. When the reserves in the Fund shall be increased by the payment of premiums by the governing boards of local school administrative school units, or otherwise, to the the extent of one million dollars (\$1,000,000), there shall be transferred from the Fund back to the State Literary Fund the sum of one million dollars (\$1,000,000) and when the Fund shall again be increased to the extent of another one million dollars (\$1,000,000), there shall be transferred therefrom back to the State Literary Fund an additional sum of one million dollars (\$1,000,000) in full reimbursement of the sum of two million dollars (\$2,000,000), which is authorized to be transferred from the State Literary Fund by the provisions hereof. All funds paid over to the State Treasurer for premiums on insurance by the governing boards of local school administrative units and all money received from interest or from loans and deposits and from any other source connected with the insurance of the property hereinafter referred to shall be held by the State Treasurer in the Fund for the purpose of paying all fire, lightning, windstorm, hail and explosion losses for which the said Fund shall be liable and the expenses necessary for the proper conduct of the insurance of said property, together with such premiums for reinsurance of such part of said insurance as the State Board of Education may deem necessary to reinsure, as provided for in G.S. 115C-535 to 115C-542. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with the provisions of G.S. 147-69.2 and 147-69.3.

When the fund herein provided for reaches the sum of five percent (5%) of the total insurance in force, then annually thereafter the State Board of Education shall proportionately decrease the premiums on insurance to an amount which will be sufficient to maintain the Fund at five percent (5%) of the total insurance in force, and in the event in the judgment of the State Board of Education the income from the investments of the Fund are sufficient to maintain the same at five percent (5%) of the total insurance in force, no premium shall be charged for the ensuing year: Provided, that no building or property insured shall cease to pay premiums until five annual payments of premiums have been made whether or not through such payments the Fund shall be increased beyond five percent (5%) of the total insurance in force, unless such building or property shall cease to be insurable within the meaning of G.S. 115C-535 to 115C-542 within such five-year period. (1955, c. 1372, art. 16, s. 2; 1981, c. 423, s. 1.)

§ 115C-537. Insurance of property by local boards; notice of election to insure and information to be furnished; outstanding policies.

All local boards of education may insure all property within their units against the direct loss or damage by fire, lightning, windstorm, hail or explosions resulting by reason of defects in equipment in public school buildings and other public school properties in the Fund hereinbefore set up and provided for. Any property covered by an insurance policy in effect on the date when the property of a unit is insured in the Fund shall be insured by the Fund as of the expiration of the policy. Each local board shall give notice of its election to insure in the Fund at least 30 days prior to such insurance becoming effective and shall furnish to the State Board of Education a full and complete list of all outstanding fire insurance policies, giving in complete detail the name of the insurers, the amount of the insurance and expirations thereof. While the said insurance policies remain in effect, the Fund shall act as

coinsurer of the properties covered by such insurance to the same extent and in the same manner as is provided for coinsurance under the provisions of the standard form of fire insurance as provided by law, and in the event of loss shall have the same rights and duties as required by participating insurance companies. (1955, c. 1372, art. 16, s. 3; 1957, c. 686, s. 3; 1981, c. 423, s. 1.)

§ 115C-538. Inspections of insured public school properties.

The State Board of Education shall provide for periodic inspections of all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local boards of education shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4; 1981, c. 423, s. 1.)

§ 115C-539. Information to be furnished prior to insuring in Fund; providing for payment of premiums.

Local boards of education shall at least 30 days before insuring in the Fund, furnish to the State Board of Education a complete and detailed list of all school buildings and contents thereof and other insurable school property, together with an estimate of the present value of the said property. Valuation for purposes of insuring in the Fund shall be reached by agreement in accordance with the procedure hereinafter set up for adjustment of losses. Local boards of education and the tax-levying authority shall be required to provide for the payment of premiums for insurance on the school properties of each local school administrative unit, respectively, to the extent of not less than seventy-five percent (75%) of the current insurable value of the said properties, including the insurance in fire insurance companies and the insurance provided by the Fund as set out herein. (1955, c. 1372, art. 16, s. 5; 1981, c. 423, s. 1.)

§ 115C-540. Determination and adjustment of premium rates; certificate as to insurance carried; no lapse; notice as to premiums required, and payment thereof.

The State Board of Education shall determine the annual premium rate to be charged for insurance of school properties as herein provided, which said rate shall not, however, be in excess of the rates fixed by law for insurance of such properties in effect on May 31, 1948, and such rates shall be adjusted from time to time so as to provide insurance against damage or loss resulting from fires, lightning, windstorm, hail or explosions resulting from defects in equipment in public school buildings and properties for the local school administrative units at the lowest cost possible in keeping with the payment of cost of administration of G.S. 115C-535 to 115C-542, and the creation of adequate reserves to pay losses which may be incurred. The State Board of Education shall furnish to each local school administrative unit annually and, at such times as changes may require, a certificate showing the amount of insurance carried on each item of insurable property. The said insurance shall not lapse

but shall remain in force until the local board of education requests that said insurance be canceled or until such property becomes uninsurable in the manner set out in G.S. 115C-542. From time to time the local board of education shall be notified as to the amount of the premiums required to be paid for said insurance and the amounts thereof shall be provided for in the annual budget of such schools. The tax-levying authorities shall provide by taxation or otherwise a sum sufficient to pay the required premiums thereon.

The local board of education shall within 30 days from notice thereof pay to the State Board of Education the premiums on such insurance, and in the event that there are no funds on hand at such time with which to make said payment, the same shall be paid out of the first funds available to such school board. Delayed payments shall bear interest at the rate of six percent (6%) per annum. (1955, c. 1372, art. 16, s. 6; 1981, c. 423, s. 1.)

§ 115C-541. Adjustment of losses; determination and report of appraisers; payment of amounts to treasurers of local school administrative units; disbursement of funds.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties for the local school administrative units, the Fund shall pay the loss in the same proportion as the amount of insurance carried bore to the valuation of the property at the time it was insured, but not exceeding the amount which it would cost to repair or replace the property with material of like quality within a reasonable time after such loss, not in excess of the amount of insurance provided for said property, and not in excess of the amount of such loss which the Fund is required to pay in participation with fire insurance companies having policies of insurance in force on said properties at the time of the loss or damage, and the Fund shall not be liable for a greater proportion of any loss than the amount of insurance thereon shall bear to the whole insurance covering the property against the peril involved.

In the event of loss or damage by fire, lightning, windstorm, hail, or explosions resulting from defects in equipment in public school buildings and properties of the local school administrative units, to the property insured, when an agreement as to the extent of such loss or damage cannot be arrived at between the State Board of Education and the local officials having charge of the said property, the amount of such loss or damage shall be determined by three appraisers; one to be named by the State Board of Education, one by the local board of education having charge of the property, and the two so appointed shall select a third, all of whom shall be disinterested persons, and qualified from experience to appraise and value such property: Provided, however, if the appraisers appointed by the State Board of Education and the local board of education shall fail for 15 days to agree upon the third appraiser, then, on request of the State Board of Education or the local board of education having charge of the property, such third appraiser shall be selected by the resident judge of the superior court of the judicial district in which the property is located. The appraisers so named shall file their written report with the State Board of Education and with the local board of education having such property in charge. The costs of the appraisal shall be paid by the Fund. Upon the determination of the loss by the appraisers, the State Board of Education shall pay the amount of such loss or damage to school property in the control of the local school administrative unit to its treasurer, upon proper warrant of the State Board of Education. Said funds shall be paid out by the treasurer of said units, as provided by this Chapter for the disbursement of the funds of such unit. (1955, c. 1372, art. 16, s. 7; 1981, c. 423, s. 1.)

§ 115C-542. Maintenance of inspection and engineering service; cancellation of insurance.

The State Board of Education is authorized and empowered to maintain an inspection and engineering service deemed by it appropriate and necessary to reduce the hazards of fire in public school buildings insured in the Fund as hereinbefore provided, and to expend for such purpose not in excess of ten percent (10%) of the annual premiums collected from the local school authorities. The State Board of Education is hereby authorized and empowered to cancel any insurance on any school property when, in its opinion, because of dilapidation and depreciation such property is no longer insurable. Before cancellation, the local board of education shall be given at least 30 days notice, and in the event said property can be restored to insurable condition, the State Board of Education may make such orders with respect to the continuance of such coverage as may be deemed proper: Provided, that the findings and results of the inspection of local school property by the agents of the Board shall be reported to local boards of education and to the board of county commissioners of such units as carry insurance with the State 30 days before budget-making time in order that all school property shall be properly taken care of and made safe from fire hazards. (1955, c. 1372, art. 16, s. 8; 1981, c. 423, s. 1.)

§§ 115C-543 to 115C-546: Reserved for future codification purposes.

SUBCHAPTER X. PRIVATE AND PROPRIETARY SCHOOLS.

ARTICLE 39.

Nonpublic Schools.

Part 1. Private Church Schools and Schools of Religious Charter.

§ 115C-547. Policy.

In conformity with the Constitutions of the United States and of North Carolina, it is the public policy of the State in matters of education that "No human authority shall, in any case whatever, control or interfere with the rights of conscience," or with religious liberty and that "religion, morality and knowledge being necessary to good government and the happiness of mankind . . . the means of education shall forever be encouraged." (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-548. Attendance; health and safety regulations.

Each private church school or school of religious charter shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance: Provided, however, that such school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be

subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-549. Standardized testing requirements.

Each private church school or school of religious charter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, two, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115C-196, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-550. High school competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each private church school or school of religious charter shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each private church school or school of religious charter shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115C-196, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-551. Voluntary participation in the State programs.

Any such school may, on a voluntary basis, participate in any State operated or sponsored program which would otherwise be available to such school, including but not limited to the high school competency testing and statewide testing programs. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-552. New school notice requirements; termination.

(a) Any new school to which this Part relates shall send to a duly authorized representative of the State of North Carolina a notice of intent to operate, name and address of the school, and name of the school's owner and chief administrator.

(b) Any school to which this Part applies shall notify a duly authorized representative of the State of North Carolina upon termination of the school. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-553. Duly authorized representative.

The duly authorized representative of the State of North Carolina to whom reports of commencing operation and termination shall be made and who may inspect certain records under this Part shall be designated by the Governor. (1979, c. 505; 1981, c. 423, s. 1.)

§ 115C-554. Requirements exclusive.

No school, operated by any church or other organized religious group or body as part of its religious ministry, which complies with the requirements of this Part shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization. (1979, c. 505; 1981, c. 423, s. 1.)

Part 2. Qualified Nonpublic Schools.**§ 115C-555. Qualification of nonpublic schools.**

The provisions of this Part shall apply to any nonpublic school which has one or more of the following characteristics:

- (1) It is accredited by the State Board of Education.
- (2) It is accredited by the Southern Association of Colleges and Schools.
- (3) It is an active member of the North Carolina Association of Independent Schools.
- (4) It receives no funding from the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-556. Attendance; health and safety regulations.

Each qualified nonpublic school shall make, and maintain annual attendance and disease immunization records for each pupil enrolled and regularly attending classes. Attendance by a child at any school to which this Part relates and which complies with this Part shall satisfy the requirements of compulsory school attendance: Provided, however, that such school operates on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year. Each school shall be subject to reasonable fire, health and safety inspections by State, county and municipal authorities as required by law. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-557. Standardized testing requirements.

Each qualified nonpublic school shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, two, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115C-196, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-558. High school competency testing.

To assure that all high school graduates possess those minimum skills and that knowledge thought necessary to function in society, each qualified nonpublic school shall administer at least once in each school year, a nationally standardized test or other nationally standardized equivalent measure selected by the chief administrative officer of such school, to all students enrolled and regularly attending the eleventh grade. The nationally standardized test or other equivalent measurement selected must measure competencies in the verbal and quantitative areas. Each qualified nonpublic school shall establish a minimum score which must be attained by a student on the selected test in order to be graduated from high school. For one year after the testing, all records shall be made available, subject to the provision of G.S. 115C-196, at the principal office of such school, at all reasonable times, for annual inspection by a duly authorized representative of the State of North Carolina. (1979, c. 506; 1981, c. 423, s. 1).

§ 115C-559. Voluntary participation in the State programs.

Any such school may, on a voluntary basis, participate in any State operated or sponsored program which would otherwise be available to such school, including but not limited to the high school competency testing and statewide testing programs. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-560. New school notice requirements; termination.

(a) Any new school to which this Part relates shall send to a duly authorized representative of the State of North Carolina a notice of intent to operate, name and address of the school, and name of the school's owner and chief administrator.

(b) Any school to which this Part applies shall notify a duly authorized representative of the State of North Carolina upon termination of the school. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-561. Duly authorized representative.

The duly authorized representative of the State of North Carolina to whom reports of commencing operation and termination shall be made and who may inspect certain records under this Part shall be designated by the Governor. (1979, c. 506; 1981, c. 423, s. 1.)

§ 115C-562. Requirements exclusive.

No qualifying nonpublic school, which complies with the requirements of this part, shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization. (1979, c. 506; 1981, c. 423, s. 1.)

§§ 115C-563 to 115C-567: Reserved for future codification purposes.

ARTICLE 40.

Proprietary Schools.

§ 115C-568. Definitions.

As used in this Article:

- (1) "Correspondence school" means an educational institution privately owned and operated by an owner, partnership or corporation conducted for the purpose of providing, by correspondence, for a consideration, profit, or tuition, systematic instruction in any field or teaches or instructs in any subject area through the medium of correspondence between the pupil and the school, usually through printed or typewritten matter sent by the school and written responses by the pupil.
- (2) "Persons" means any individual, association, partnership or corporation, and includes any receiver, referee, trustee, executor, or administrator as well as a natural person.
- (3) "Private business school" or "business school" or "school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering business courses for which tuition is charged, in such subjects as typewriting, manual or machine shorthand, filing and indexing, receptionist's duties, key-punch, teletype, penmanship, bookkeeping, accounting, office machines, business arithmetic, English, business letter writing, salesmanship, personality development, leadership training, public speaking, real estate, insurance, traffic management, business psychology, economics, business management, and other related subjects of a similar character or subjects of general education when they contribute value to the objective of the course of study. Classes in any of the subjects herein referred to which are taught or coached in homes or elsewhere to five or less students are not included in the term "school" and shall be exempt from the requirements of this Article.
- (4) "Private trade school" means an educational institution privately owned and operated by an owner, partnership or corporation, offering classes conducted for the purpose of teaching, for profit or for a tuition charge, any trade, technical, mechanical or industrial occupation or teaching any or several of the subjects needed to train youths or adults in the skills, technical knowledge, related industrial information, and job judgment, necessary for success in one or more skilled trades, industrial occupations or related occupations. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 1; 1981, c. 423, s. 1.)

§ 115C-569. Exemptions.

It is the purpose of this Article to include all private schools operated for profit: provided, that the following schools shall be exempt from the provisions of this Article:

- (1) Nonprofit schools conducted by bona fide eleemosynary or religious institutions.
- (2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged.
- (3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.

- (4) Any school for which there is another legally existing licensing board in this State.
- (5) Any established university, professional, or liberal arts college, public or private high school approved by the Department of Public Instruction, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this Article: Provided, that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules and regulations prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the Article shall apply to all business schools, trade schools, or correspondence schools or branch schools, as defined in this Article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 2; 1981, c. 423, s. 1.)

§ 115C-570. State Board of Education to administer Article; issuance of diplomas by schools; investigation and inspection; regulations and standards.

(a) The State Board of Education, acting by and through the Superintendent of Public Instruction, shall have authority to administer and enforce this Article and to issue licenses to private schools and educational institutions, as the same are defined herein, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Any such private school or educational institution may by and with the approval of the State Board issue certificates and diplomas.

(c) The State Board, acting by and through the Superintendent of Public Instruction, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the Board, maintain a list of schools approved under the provisions of this Article which list shall be available for the information of the public, and provide for periodic inspection of all schools licensed under the provisions of this Article. Through periodic reports required of licensed schools or branch schools and by inspections made by authorized representatives of the State Board of Education, the State Board of Education shall have general supervision over business, trade and correspondence schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the licensed business, trade and correspondence schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end the State Board of Education is authorized to issue such regulations and standards not inconsistent with the provisions of this Article as are necessary to administer the provisions of this Article. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 3; 1981, c. 423, s. 1.)

§ 115C-571. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.

(a) No person shall operate, conduct or maintain or offer to operate in this State a private school or educational institution as defined herein unless a license is first secured from the State Board of Education issued in accordance with the provisions of this Article and the rules and regulations promulgated by the Board under the authority of G.S. 115C-570. The license, when issued, shall constitute the formal acceptance by the Board of the educational programs and facilities of each private school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the Superintendent of Public Instruction for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school or branch school, for which a license is sought:

- (1) The title or name of the school or classes, together with the name and address of the owners and of the controlling officers thereof.
- (2) The general field of instruction.
- (3) The place or places where such instruction will be given.
- (4) A specific listing of the equipment available for instruction in each field.
- (5) The qualifications of instructors and supervisors.
- (6) Financial resources available to equip and to maintain the school or classes.
- (7) Such additional information as the State Board may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalog of the school which shall be in published form and certified by an authorized official of the school as being true and correct in content and policy. The school bulletin shall contain the following information:
 - a. Identifying data, such as volume number and date of publication.
 - b. Names of the institution and its governing body, officials and faculty.
 - c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
 - d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
 - e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
 - f. Institution's policy and regulations relative to standards of progress required of the student by the institution. This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reenrollment for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.
 - g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.

- h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
- i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom.
- j. A description of the available space, facilities and equipment.
- k. A course outline for each course for which approval is requested, showing subjects or units in the course, type of skill or skill to be learned, and approximate time and clock hours to be spent on each subject or unit.
- l. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the State Board as provided herein, a license shall be issued to the applicant when it is shown to the satisfaction of said Board that said applicant, school, programs of study or courses are found to have met the following criteria:

- (1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.
- (2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.
- (3) Education and experience qualifications of director, administrators and instructors are adequate.
- (4) The institution maintains a written record of the previous education and training of the student.
- (5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.
- (6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course and indicating that training was satisfactorily completed.
- (7) Adequate records as prescribed by the State Board of Education are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.
- (8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Education may require such evidence of compliance as is deemed necessary.
- (9) The school is financially sound and capable of fulfilling its commitments for training.
- (10) The school does not exceed its enrollment limitation as established by the State Board of Education.
- (11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.
- (12) The school's administrators, directors, owners and instructors are of good reputation and character.
- (13) Such additional criteria as may be deemed necessary by the State Board.

(d) Any license issued shall be restricted to the programs of instruction or courses specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the State Superintendent for approval of additional programs of instruction or courses in which it is desired to offer instruction during the effective period of the license. (1955, c. 1372, art. 30, ss. 3, 4; 1957, c. 1000; 1961, c. 1175, s. 4; 1981, c. 423, s. 1.)

§ 115C-572. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.

(a) All licenses issued shall expire on June 30 next following the date of issuance.

(b) Licenses shall be renewable annually on July 1: Provided, an application for the renewal of the license has been filed in the form and manner prescribed by the State Board and the renewal fee has been paid: Provided, further that the school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.

(c) After a license is issued to any school by the State Board of Education on the basis of its application, it shall be the responsibility of said school to notify immediately said Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.

(d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 5; 1981, c. 423, s. 1.)

§ 115C-573. Commercial Education Fund established; refund of fees.

The fees and licenses collected under this section shall be placed in a special fund to be designated the "Commercial Education Fund" and shall be used under the supervision and direction of the State Board of Education for the administration of this Article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked. (1961, c. 1175, s. 6; 1981, c. 423, s. 1.)

§ 115C-574. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.

(a) The State Board, acting by and through the Superintendent of Public Instruction, shall have the authority to refuse to issue a license and to suspend or revoke a license theretofore issued but before denying any such license, including the renewal thereof, and before suspending or revoking any license theretofore issued, he shall afford the applicant or holder of any such license an opportunity to be heard in connection therewith in person or by counsel and at least 30 days prior to the date set for a hearing on any such matter shall notify in writing the applicant for or the holder of any such license of the date of said hearing and assign therein the grounds for the action contemplated to be taken and as to which inquiry shall be made on the date of such hearing.

(b) The action of the State Board acting by and through the Superintendent of Public Instruction in refusing to grant a license or to renew a license, or in suspending or revoking a license, shall be subject to judicial review in all respects according to the provisions and procedures set forth in Chapter 150A of the General Statutes of North Carolina.

(c) The State Board, acting by and through the Superintendent of Public Instruction, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds one or more of the following:

- (1) That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules and regulations promulgated thereunder.
- (2) That the applicant for or holder of such a license has knowingly presented to the State Board of Education false or misleading information relating to approval.
- (3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Education to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the State Board of Education under the provisions of this Article.
- (4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school.
- (5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.
- (6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.
- (7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the State Board.
- (8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.
- (9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff. (1961, c. 1175, s. 7; 1973, c. 1331, s. 3; 1981, c. 423, s. 1.)

§ 115C-575. Private schools advisory committee; appointment; duties.

(a) In the administration of this Article, the Superintendent of Public Instruction shall appoint an advisory committee composed of not less than five members who shall serve at his will and pleasure and who are fairly representative of the types of private schools or educational institutions operated, conducted and maintained within this State, whose duties shall be to advise the Superintendent of Public Instruction regarding the criteria to be used in formulating standards and the rules and regulations thereunder to be prescribed for the administration of this Article and the management and operation of the schools subject to the provisions hereof including the development of programs of instruction to be pursued in each type of institution subject to this Article.

(b) The terms of the members shall be set by the Superintendent of Public Instruction. (1961, c. 1175, s. 8; 1981, c. 423, s. 1.)

§ 115C-576. Execution of bond required; filing and recording; actions upon bond.

(a) Before the State Board of Education shall issue such license the person, partnership, association of persons, or corporation shall execute a bond in the sum of one thousand dollars (\$1,000), signed by a solvent guaranty company authorized to do business in the State of North Carolina, or by two solvent individual sureties, payable to the State of North Carolina, and approved as to solvency by the clerk of the superior court of the county in which such school or branch school will be located and conduct its business, conditioned that the principal in said bond will carry out and comply with each and every contract, made and entered into by said school or branch school, acting by and through its officers and agents with any student who desires to enter such school or branch school and to take any courses offered therein and will pay back to such student all amounts collected in tuition and fees in case of failure on the part of the parties obtaining a license from the State Board of Education to open and conduct a business school, trade school or a correspondence school, to comply with its contracts to give the instructions contracted for, and for full period evidenced by such contract. Such bond shall be filed with the clerk of the superior court of the county in which the school or branch school executing the bond is located, and shall be recorded by such clerk in a book provided for that purpose.

(b) The requirement herein specified for giving the aforesaid bond of one thousand dollars (\$1,000) shall apply to all business, trade or correspondence schools, or any branches thereof operating in North Carolina, and the State Board of Education shall not issue any license to any person, firm or corporation to operate any of the aforesaid schools until said bond has been given and notice of the approval of same by the clerk of the superior court has been filed with said Board of Education. Operator bonds of one thousand dollars (\$1,000) each shall be required for each branch of such business, trade, correspondence schools, or any branch thereof operated within the State by any person, partnership or corporation.

(c) In any and all cases where the party receiving the license from the State Board of Education fails to comply with any contract made and entered into with any student, or with the parents or guardian of said student, then the State of North Carolina upon the relation of said student, parent or guardian entering into the contract shall have a cause of action against the principal and sureties on the bonds herein provided for the full amount of payments made to such person, with six percent (6%) interest from the date of payment of said amount. For a violation of its contract with a student, or for other good cause, the State Board of Education is authorized to revoke the license issued to the offending school. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9; 1981, c. 423, s. 1.)

§ 115C-577. Operating school without license or bond made misdemeanor.

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a business school, a trade school or a correspondence school, or branch school as defined in this Article, without first having obtained the license herein required, and without first having executed the bond required, shall be guilty of a misdemeanor and be punishable by a fine of not less than one hundred dollars (\$100.00), nor more than five hundred dollars (\$500.00) or 30 days imprisonment, or both, at the discretion of the court, and each day said school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000; 1961, c. 1175, s. 10; 1981, c. 423, s. 1.)

§ 115C-578. Contracts with unlicensed schools and evidences of indebtedness made null and void.

All contracts entered into by business, trade or correspondence schools, or branch school, as defined in this Article, with students or prospective students, and all promissory notes or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this Article. (1957, c. 1000; 1961, c. 1175, s. 11; 1981, c. 423, s. 1.)

§§ 115C-579 to 115C-583: Reserved for future codification purposes.

Chapter 115D.

Community Colleges and Technical Institutes.

Article 1.

General Provisions for State Administration.

- Sec.
- 115D-1. Statement of purpose.
- 115D-2. Definitions.
- 115D-2.1. State Board of Community Colleges.
- 115D-3. Department of Community Colleges; staff; advisory council.
- 115D-4. Establishment and transfer of institutions.
- 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.
- 115D-6. Withdrawal of State support.
- 115D-7 to 115D-11. [Reserved.]

Article 2.

Local Administration.

- 115D-12. Each institution to have board of trustees; selection of trustees.
- 115D-13. Terms of office of trustees.
- 115D-14. Board of trustees a body corporate; corporate name and powers; title to property.
- 115D-15. Sale, exchange or lease of property.
- 115D-16. Elective officials serving as trustees.
- 115D-17. Compensation of trustees.
- 115D-18. Organization of boards; meetings.
- 115D-19. Removal of trustees.
- 115D-20. Powers and duties of trustees.
- 115D-21. Traffic regulations; fines and penalties.
- 115D-22. State Retirement System for Teachers and State Employees; social security.
- 115D-23. Workers' Compensation Act applicable to institutional employees.
- 115D-24. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.
- 115D-25. Purchase of annuity or retirement income contracts for employees.
- 115D-26. Conflict of interest.
- 115D-27 to 115D-30. [Reserved.]

Article 3.

Financial Support.

- Sec.
- 115D-31. State financial support of institutions.
- 115D-32. Local financial support of institutions.
- 115D-33. Providing local public funds for institutions established under this Chapter; elections.
- 115D-34. Providing local public funds for institutions previously established.
- 115D-35. Requests for elections to provide funds for institutions.
- 115D-36. Elections on question of conversion of institutions and issuance of bonds therefor.
- 115D-37. Payment of expenses of special elections under Chapter.
- 115D-38. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues.
- 115D-39. Student tuition and fees.
- 115D-40 to 115D-44. [Reserved.]

Article 4.

Budgeting, Accounting, and Fiscal Management.

- 115D-45 to 115D-53. [Recodified.]

Article 4A.

Budgeting, Accounting, and Fiscal Management.

- 115D-54. Preparation and submission of institutional budget.
- 115D-55. Budget management.
- 115D-56. Final adoption of budget.
- 115D-57. Interim budget.
- 115D-58. Amendments to the budget; budget transfers.
- 115D-58.1. Federal contracts and grants.
- 115D-58.2. Allocation of revenue to the institution by the local tax-levying authority.
- 115D-58.3. Provision for disbursement of State money.
- 115D-58.4. Provisions for disbursement of local money.
- 115D-58.5. Accounting system.
- 115D-58.6. Investment of idle cash.
- 115D-58.7. Selection of depository; deposits to be secured.
- 115D-58.8. Facsimile signatures.
- 115D-58.9. Daily deposits.

Sec.

- 115D-58.10. Surety bonds.
 115D-58.11. Fire and casualty insurance on institutional buildings and contents.
 115D-58.12. Liability insurance; tort actions against boards of trustees.
 115D-58.13 to 115D-58.17. [Reserved.]

Article 5.**Special Provisions.**

- 115D-59. Multiple-county administrative areas.
 115D-60. Special provisions for Central Piedmont Community College.
 115D-61. Special provisions for Coastal Carolina Community College.
 115D-62. Trustee Association Regions.
 115D-63 to 115D-67. [Reserved.]

Article 6.**Textile Training School.**

- 115D-68. Creation of board of trustees; mem-

Sec.

- bers and terms of office; no compensation.
 115D-69. Powers of board.
 115D-70. Board vested with powers and authority of former boards.
 115D-71. Persons eligible to attend institution; subjects taught.
 115D-72 to 115D-76. [Reserved.]

Article 7.**Miscellaneous Provisions.**

- 115D-77. Nondiscrimination policy.
 115D-78. Access to information and public records.
 115D-79. Open meetings.
 115D-80. Rule-making procedure.
 115D-81. Saving clauses.

ARTICLE 1.***General Provisions for State Administration.*****§ 115D-1. Statement of purpose.**

The purposes of this Chapter are to provide for the establishment, organization, and administration of a system of educational institutions throughout the State offering courses of instruction in one or more of the general areas of two-year college parallel, technical, vocational, and adult education programs, to serve as a legislative charter for such institutions, and to authorize the levying of local taxes and the issuing of local bonds for the support thereof. The major purpose of each and every institution operating under the provisions of this Chapter shall be and shall continue to be the offering of vocational and technical education and training, and of basic, high school level, academic education needed in order to profit from vocational and technical education, for students who are high school graduates or who are beyond the compulsory age limit of the public school system and who have left the public schools. (1963, c. 448, s. 23; 1969, c. 562, s. 1; 1979, c. 462, s. 2.)

§ 115D-2. Definitions.

As used in this Chapter:

- (1) The "administrative area" of an institution comprises the county or counties directly responsible for the local financial support and local administration of such institution as provided in this Chapter.
- (2) The term "community college" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. Which offers the freshmen and sophomore courses of a college of arts and sciences,
 - b. Which offers organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;

- c. Which offers vocational, trade, and technical specialty courses and programs, and
- d. Which offers courses in general adult education.
- (3) The term "institution" refers to a community college or a technical institute.
- (4) The term "regional institution" means an institution which serves four or more counties which have been assigned as of July 1, 1973, to the institution by the Department of Community Colleges for purposes of conducting adult education classes.
- (5) The term "State Board" refers to the State Board of Community Colleges.
- (6) The "tax-levying authority" of an institution is the board of commissioners of the county or all of the boards of commissioners of the counties, jointly, which constitute the administrative area of the institution.
- (7) The term "technical institute" is defined as an educational institution operating under the provisions of this Chapter and dedicated primarily to the educational needs of the particular area for which established, and
 - a. Which offers organized credit curricula for the training of technicians; curricular courses may carry transfer credit to a senior college or university where the course is comparable in content and quality and is appropriate to a chosen course of study;
 - b. Which offers vocational, trade, and technical specialty courses and programs,
 - c. Which offers courses in general adult education.
 - d. The terms "technical institute" and "technical college" are deemed to be synonymous. Local boards of trustees, with concurrence of the respective county commissioners, may elect to use either term. (1963, c. 448, s. 23; 1969, c. 562, s. 2; 1973, c. 590, s. 1; 1979, c. 462, s. 2; c. 553; c. 896, s. 1; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 553, added paragraph d to subdivision (7).

Session Laws 1979, c. 896, s. 1, effective Jan. 1, 1981, rewrote subdivision (5), which formerly defined "State Board of Education."

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in subdivision (5).

§ 115D-2.1. State Board of Community Colleges.

- (a) The State Board of Community Colleges is established.
- (b) The State Board of Community Colleges shall consist of 19 members, as follows:
 - (1) The Lieutenant Governor (or a person designated by the Lieutenant Governor) shall be a member ex officio.
 - (2) The Treasurer of North Carolina shall be a member ex officio.
 - (3) The Governor shall appoint to the State Board four members from the State at large and one member from each of the six Trustee Association Regions defined in G.S. 115D-63 [G.S. 115D-62]. The initial appointments by the Governor shall be made effective July 1, 1980, or as soon as feasible thereafter. In order to establish regularly overlapping terms, the initial appointments by the Governor shall be made so that three expire June 30, 1981, three expire June 30, 1983, and four expire June 30, 1985. Each subsequent regular appointment by the Governor shall be for a term of six years and until a successor is appointed and qualifies. Any vacancy occurring among his

appointees before the expiration of term shall be filled by appointment of the Governor; the member so appointed shall meet the same residential qualification, if any, as the member whom he succeeds and shall serve for the remainder of the unexpired term of that member.

(4) The General Assembly shall elect seven members of the State Board from the State at large in the following manner:

- a. In 1980, the Senate shall elect three members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and one of whom shall serve a term expiring June 30, 1985. Each subsequent regular election by the Senate shall be for a term of six years and until a successor is elected and qualifies.
- b. In 1980, the House of Representatives shall elect four members, one of whom shall serve a term expiring June 30, 1981, one of whom shall serve a term expiring June 30, 1983, and two of whom shall serve a term expiring June 30, 1985. Each subsequent regular election by the House of Representatives shall be for a term of six years and until a successor is elected and qualifies.
- c. In 1985, upon expiration of the term of the fourth member elected by the House of Representatives in 1980, that seat shall be filled by election by the Senate of a member to serve a term of six years; and the right to elect to fill that seat on the State Board shall thereafter rotate between the two houses every six years.
- d. The initial elections by the two houses of the General Assembly shall be held on or before July 1, 1980.
- e. Any vacancy occurring among the members elected by the two houses of the General Assembly before the expiration of term shall be filled when the General Assembly next convenes. The member then elected shall be elected by the same house that elected the member whom he succeeds, and shall serve for the remainder of the unexpired term of that member.
- f. At each session of the General Assembly held in an odd-numbered year, the presiding officer of each house shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house suggestions of persons to be considered by that house for election to the State Board. In order for a person to have standing to be considered as a candidate for nomination by either committee, that person shall be formally proposed as a candidate for nomination by a member of that committee. The chairmen of the two committees shall jointly determine a common final date for receiving suggestions from members of that house, a common final date for receiving from members of the committee formal proposals of candidates for nomination, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. There is no limit on the number of persons a Senator or a Representative may propose as candidates. When the proposing process is closed, each committee shall list all proposed candidates and shall separately vote "aye" or "no" on each proposed candidate to determine whether that person shall be chosen as a candidate for nomination by the committee. The favorable vote of a majority of those members of the committee present and voting shall constitute one a candidate for nomination. An individual cannot be a candidate for nomination to more than one place. The committee of each house shall nomi-

nate at least one person for each place to be filled by that house. No person may simultaneously be a candidate for election by both houses, and if one is nominated by both committees, he shall determine to which house he shall be nominated and so advise the chairmen of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees, to which any member of that house may make one or more additional nominations. Each house shall then proceed to an election of members of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by the house to the indicated positions and for the indicated terms. The roll shall then be called electronically. If a majority of those voting shall vote "aye," the persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this § 115D-2.1 with respect to the election by that house of members of the State Board.

(c) No person may be appointed or elected to more than two consecutive terms of six years on the State Board.

(d) No member of the General Assembly, no officer or employee of the State, and no officer or employee of an institution under the jurisdiction of the State Board, and no spouse of any of any of those persons, shall be eligible to serve on the State Board.

(e) The Governor shall convene the membership of the State Board on July 1, 1980, or as soon as feasible thereafter. The State Board at that meeting shall elect from its appointed or elected membership a chairman and such other officers as it may deem necessary.

(f) At its first meeting after July 1, 1981, and every two years thereafter, the State Board shall elect from its appointed or elected membership a chairman and such other officers as it may deem necessary.

(g) Regular meetings of the State Board shall be held monthly on a day fixed by the State Board. Special meetings of the State Board may be set at any regular meeting or may be called by the chairman. Ten members shall constitute a quorum for the transaction of business. (1979, c. 896, s. 2; 1979, 2nd Sess., c. 1130, s. 5; 1981, c. 47, s. 8; c. 474.)

Effect of Amendments. — The 1979, 2nd Sess., amendment rewrote this section.

The first 1981 amendment inserted "(or a person designated by the Lieutenant Governor)" in subdivision (b)(1). The amendatory act purported to amend subdivision (b)(2); however, subdivision (b)(1) was plainly intended.

Session Laws 1981, c. 47, s. 7, provides: "When the Speaker, President of the Senate, or Lieutenant Governor has designated a person to serve in this place as permitted by this act, that person shall be compensated in accordance with G.S. 120-3.1 if a member of the General Assembly, in accordance with G.S. 138-6 if a

State officer or employee, and in accordance with G.S. 138-5 in any other case, except that a member of the General Assembly so designated may not receive per diem if the Speaker, President of the Senate or Lieutenant Governor may not receive per diem."

The second 1981 amendment rewrote the ninth sentence of paragraph f of subdivision (b)(4). The amendatory act referred to the ninth sentence of "G.S. 115D-2.1(f)." Subsection (f) of this section contains only one sentence, and it appears from the context that paragraph f of subdivision (b)(4) was intended. The amendment has therefore been given effect according to its apparent intent.

§ 115D-3. Department of Community Colleges; staff; advisory council.

The Department of Community Colleges shall be a principal administrative department of State government under the direction of the State Board of Community Colleges, and shall be separate from the free public school system of the State and the Department of Public Education. The State Board shall have authority to adopt and administer all policies, regulations, and standards which it may deem necessary for the operation of the Department.

The State Board shall elect a State President of the Department of Community Colleges. He shall be the chief administrative officer of the Department. The compensation of this position shall be fixed by the Governor, upon the recommendation of the State Board, subject to approval by the Advisory Budget Commission.

The State President shall be assisted by such professional staff members as may be deemed necessary to carry out the provisions of this Chapter, who shall be elected by the State Board on nomination of the State President. The State Board shall fix the compensation of the staff members it elects, subject to the approval of the Governor and the Advisory Budget Commission. These staff members shall include such officers as may be deemed desirable by the State President and State Board. Provision shall be made for persons of high competence and strong professional experience in such areas as academic affairs, public service programs, business and financial affairs, institutional studies and long-range planning, student affairs, research, legal affairs, health affairs and institutional development, and for State and federal programs administered by the State Board. In addition, the State President shall be assisted by such other employees as may be needed to carry out the provisions of this Chapter, who shall be subject to the provisions of Chapter 126 of the General Statutes. The staff complement shall be established by the State Board on recommendation of the State President to insure that there are persons on the staff who have the professional competence and experience to carry out the duties assigned and to insure that there are persons on the staff who are familiar with the problems and capabilities of all of the principal types of institutions represented in the system. The State Board shall appoint an advisory council consisting of at least seven members to advise the State Board on matters relating to personnel, curricula, finance, articulation, and other matters concerning institutional programs and coordination with other educational institutions of the State. The State Board of Community Colleges shall have all other powers, duties, and responsibilities delegated to the State Board of Education affecting the Department of Community Colleges not otherwise stated in this Chapter. (1963, c. 448, s. 23; 1971, c. 1244, s. 14; 1975, c. 699, s. 5; 1979, c. 462, s. 2; c. 896, s. 3; 1979, 2nd Sess., c. 1130, ss. 1, 2; 1981, c. 859, s. 35.2.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 3, effective Jan. 1, 1981, rewrote this section, which formerly provided for administration of the system of community colleges and technical institutes by the State Board of Education.

Session Laws 1979, c. 896, s. 12, provides:

"The State Board of Community Colleges and Technical Institutes may adopt regulations beginning July 1, 1980, but no such regulations shall become effective prior to January 1, 1981."

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, rewrote the first sentence in the

first paragraph, deleted "establishment and" preceding "operation" in the second sentence in the first paragraph and substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the last sentence of the third paragraph.

The 1981 amendment, effective July 1, 1981, added "subject to the approval of the Governor and the Advisory Budget Commission" at the end of the second sentence of the third paragraph.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 115D-4. Establishment and transfer of institutions.

The establishment of all community colleges and technical institutes shall be subject to the prior approval of the State Board of Community Colleges and each institution shall be established only in accordance with the provisions of this Chapter and the regulations, standards, and procedures adopted by the State Board not inconsistent herewith. In no case, however, shall approval be granted by the State Board for the establishment of an institution until it has been demonstrated to the satisfaction of the State Board that a genuine educational need exists within a proposed administrative area, that existing public and private post-high school institutions in the area will not meet the need, that adequate local financial support for the institution will be provided, that public schools in the area will not be affected adversely by the local financial support required for the institution, and that funds sufficient to provide State financial support of the institution are available.

The approval of any new institution, or the conversion of any existing institution into a new type of institution, or the expenditures of any State funds for any capital improvements at existing institutions shall be subject to the prior approval of the State Board of Community Colleges, the Governor, and the Advisory Budget Commission. The expenditure of State funds at any institution herein authorized to be approved by the State Board shall be subject to the terms of the Executive Budget Act unless specifically otherwise provided in this Chapter. (1963, c. 448, s. 23; 1965, c. 1028; 1971, c. 1244, s. 14; 1977, c. 154, s. 1; 1979, c. 462, s. 2; c. 896, s. 4; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 4, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first sentence of the first paragraph and near the end of the first sentence of the second paragraph and inserted "State" preceding "board" near the end of the first sentence of the first paragraph, in two places in the

second sentence of the first paragraph and in the second sentence of the second paragraph.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first sentence of the first paragraph and near the end of the first sentence of the second paragraph.

§ 115D-5. Administration of institutions by State Board of Community Colleges; personnel exempt from State Personnel Act; extension courses; tuition waiver; in-plant training; contracting, etc., for establishment and operation of extension units of the community college system; use of existing public school facilities.

(a) The State Board of Community Colleges may adopt and execute such policies, regulations and standards concerning the establishment, administration, and operation of institutions as the State Board may deem necessary to insure the quality of educational programs, to promote the systematic meeting of educational needs of the State, and to provide for the equitable distribution of State and federal funds to the several institutions.

The State Board of Community Colleges shall establish standards and scales for salaries and allotments paid from funds administered by the State Board,

and all employees of the institutions shall be exempt from the provisions of the State Personnel Act. The State Board shall have authority with respect to individual institutions: to approve sites, buildings, building plans, budgets; to approve the selection of the chief administrative officer; to establish and administer standards for professional personnel, curricula, admissions, and graduation; to regulate the awarding of degrees, diplomas, and certificates; to establish and regulate student tuition and fees and financial accounting procedures.

(b) In order to make instruction as accessible as possible to all citizens, the teaching of curricular courses and of noncurricular extension courses at convenient locations away from institution campuses as well as on campuses is authorized and shall be encouraged. A pro rata portion of the established regular tuition rate charged a full-time student shall be charged a part-time student taking any curriculum course. In lieu of any tuition charge, the State Board of Community Colleges shall establish a uniform registration fee, or a schedule of uniform registration fees, to be charged students enrolling in extension courses for which instruction is financed primarily from State funds; provided, however, that the State Board of Community Colleges may provide by general and uniform regulations for waiver of tuition and registration fees for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate, for training courses for volunteer firemen, local fire department personnel, volunteer rescue and lifesaving department personnel, local rescue and lifesaving department personnel, local law-enforcement officers, patients in State alcoholic rehabilitation centers, all full-time custodial employees of the Department of Correction, trainees enrolled in courses conducted under the New and Expanding Industry Program, clients of sheltered workshops, clients of adult developmental activity programs, and prison inmates. Provided further, tuition shall be waived for senior citizens attending institutions operating pursuant to this Chapter as set forth in Chapter 115B of the General Statutes, Tuition Waiver for Senior Citizens.

(c) No course of instruction shall be offered by any community college or technical institute at State expense or partial State expense to any captive or co-opted group of students, as defined by the State Board of Community Colleges, without prior approval of the State Board of Community Colleges. Approval by the State Board of Community Colleges shall be presumed to constitute approval of both the course and the group served by that institution. The State Board of Community Colleges may delegate to the State President the power to make an initial approval, with final approval to be made by the State Board of Community Colleges. A course taught without such approval will not yield any full-time equivalent students, as defined by the State Board of Community Colleges.

(d) Community colleges and technical institutes shall assist in the preemployment and in-service training of employees in industry, business, agriculture, health occupation and governmental agencies. The State Board of Community Colleges shall make appropriate regulations including the establishment of maximum hours of instruction which may be offered at State expense in each in-plant training program. No instructor or other employee of a community college or technical institute shall engage in the normal management, supervisory and operational functions of the establishment in which the instruction is offered during the hours in which the instructor or other employee is employed for instructional or educational purposes.

(e) The State Board of Community Colleges is authorized to enter into agreements with local boards of education, upon approval by the Governor and the Advisory Budget Commission, for the establishment and operation of extension units of the community college system. The State Board is further authorized to provide the financial support for matching capital outlay and for

operating and equipping extension units as provided in this Chapter for other institutions, subject to available funds.

On petition of a board of education of the school administrative unit in which an extension unit is proposed to be established, the State Board of Community Colleges may approve the use by the proposed institution of existing public school facilities, if the State Board finds:

- (1) That an adequate portion of these facilities can be devoted to the exclusive use of the institution, and
- (2) That use of these facilities will be consistent with sound educational considerations. (1963, c. 488, s. 23; 1967, c. 652; 1969, c. 1294; 1973, c. 768; 1975, c. 882; 1977, c. 1065; 1979, c. 462, s. 2; c. 896, ss. 5-7; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 609; c. 859, s. 35.1; c. 897; c. 1127, s. 43.)

Effect of Amendments. — Session Laws 1979, c. 896, ss. 5-7, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" and "the State Board" for "the Board" throughout the section.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" throughout the section.

Session Laws 1981, c. 609, inserted "all full-time custodial employees of the Department of Correction," in the third sentence of subsection (b).

Session Laws 1981, c. 859, s. 35.1, effective

July 1, 1981, inserted "for persons not enrolled in elementary or secondary schools taking courses leading to a high school diploma or equivalent certificate" in the third sentence of subsection (b).

Session Laws 1981, c. 897; inserted "trainees enrolled in courses conducted under the New and Expanding Industry Program" in the third sentence of subsection (b).

Session Laws 1981, c. 1127, s. 43, inserted "clients of sheltered workshops, clients of adult developmental activity programs" in the third sentence of subsection (b).

Session Laws 1981, c. 859, s. 97, and c. 1127, s. 89, contain severability clauses.

§ 115D-6. Withdrawal of State support.

The State Board of Community Colleges may withdraw or withhold State financial and administrative support of any institutions subject to the provisions of this Chapter in the event that:

- (1) The required local financial support of an institution is not provided;
- (2) Sufficient State funds are not available;
- (3) The officials of an institution refuse or are unable to maintain prescribed standards of administration or instruction; or
- (4) Local educational needs for such an institution cease to exist. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 8; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 8, effective Jan. 1, 1981, substituted "The State Board of Community Colleges and Technical Institutes" for "The State Board of Education" at the beginning of the section.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "The State Board of Community Colleges" for "The State Board of Community Colleges and Technical Institutes" at the beginning of the section.

§§ 115D-7 to 115D-11: Reserved for future codification purposes.

ARTICLE 2.

Local Administration.

§ 115D-12. Each institution to have board of trustees; selection of trustees.

(a) Each community college and technical institute established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, who shall be selected by the following agencies.

Group One — four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59.

Group Two — four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the judicial district where the institution is located shall fill the position or positions by appointment.

Group Three — four trustees, appointed by the Governor.

Group Four — the president of the student government or the chairman of the executive board of the student body of each community college and technical institute established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution.

(b) All trustees shall be residents of the administrative area of the institution for which they are selected or of counties contiguous thereto with the exception of members provided for in G.S. 115D-12(a), Group Four.

(c) Vacancies occurring in any group for whatever reason shall be filled for the remainder of the unexpired term by the agency or agencies authorized to select trustees of that group and in the manner in which regular selections are made. Should the selection of a trustee not be made by the agency or agencies having the authority to do so within 60 days after the date on which a vacancy occurs, whether by creation or expiration of a term or for any other reason, the Governor shall fill the vacancy by appointment for the remainder of the unexpired term. (1963, c. 448, s. 23; 1977, c. 823, ss. 1-4; 1979, c. 462, s. 2.)

§ 115D-13. Terms of office of trustees.

Trustees shall serve for terms of eight years, with the exception of the ex officio member, except that initially: For all institutions for which boards of trustees first shall be established pursuant to the provisions of this Chapter, terms of the members of each board shall be so set by the selecting agencies that the term of a member in each group in G.S. 115D-12(a) shall expire on June 30 of every other year, the shortest term to expire on June 30 of the next odd-numbered year following the date the board of trustees is established. Thereafter, all terms shall be eight years and shall commence on July 1. (1963, c. 448, s. 23; 1977, c. 823, s. 5; 1979, c. 462, s. 2.)

§ 115D-14. Board of trustees a body corporate; corporate name and powers; title to property.

The board of trustees of each institution shall be a body corporate with powers to enable it to acquire, hold, and transfer real and personal property, to enter into contracts, to institute and defend legal actions and suits, and to exercise such other rights and privileges as may be necessary for the management and administration of the institution in accordance with the provisions and purposes of this Chapter. The official title of each board shall be "The Trustees of" (filling in the name of the institution) and such title shall be the official corporate name of the institution.

The several boards of trustees shall hold title to all real and personal property donated to their respective institutions by private persons or purchased with funds provided by the tax-levying authorities of their respective institutions. Title to equipment furnished by the State shall remain in the State Board of Community Colleges. In the event that an institution shall cease to operate, title to all real and personal property donated to the institution or purchased with funds provided by the tax-levying authorities, except as provided for in G.S. 115D-14, shall vest in the county in which the institution is located, unless the terms of the deed of gift in the case of donated property provides otherwise, or unless in the case of two or more counties forming a joint institution the contract provided for in G.S. 115D-71 provides otherwise. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the second sentence of the second paragraph.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the second sentence of the second paragraph.

§ 115D-15. Sale, exchange or lease of property.

When in the opinion of the board of trustees of any institution organized under the provisions of this Chapter, the use of any property, real or personal, owned or held by said board of trustees is unnecessary or undesirable for the purposes of said institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education or in accordance with provisions of G.S. 160A-274. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1969, c. 338; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first sentence.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first sentence.

§ 115D-16. Elective officials serving as trustees.

The office of trustee of any institution established or operated pursuant to this Chapter is hereby declared to be an office which may be held by the holder of any elective office, as defined in G.S. 128-1.1(d), in addition to and concurrently with those offices permitted by G.S. 128-1.1. (1979, c. 462, s. 2.)

§ 115D-17. Compensation of trustees.

Trustees shall receive no compensation for their services but shall receive reimbursement, according to regulations adopted by the State Board of Community Colleges, for cost of travel, meals, and lodging while performing their official duties. The reimbursement of the trustees from State funds shall not exceed the amounts permitted in G.S. 138-5. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first sentence.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first sentence.

§ 115D-18. Organization of boards; meetings.

At the first meeting after its selection, each board of trustees shall elect from its membership a chairman, who shall preside at all board meetings, and a vice-chairman, who shall preside in the absence of the chairman. The trustees shall also elect a secretary, who may be a trustee, to keep the minutes of all board meetings. All three officers of the board shall be elected for period of one year but shall be eligible for reelection by the board.

Each board of trustees shall meet as often as may be necessary for the conduct of the business of the institution but shall meet at least once every three months. Meetings may be called by the chairman of the board or by the chief administrative officer of the institution. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-19. Removal of trustees.

Should the State Board of Community Colleges have sufficient evidence that any member of the board of trustees of an institution is not capable of discharging, or is not discharging, the duties of his office as required by law or lawful regulation, or is guilty of immoral or disreputable conduct, the State Board shall notify the chairman of such board of trustees, unless the chairman is the offending member, in which case the other members of the board shall be notified. Upon receipt of such notice there shall be a meeting of the board of trustees for the purpose of investigating the charges, at that meeting a representative of the State Board of Community Colleges may appear to present evidence of the charges. The allegedly offending member shall be given proper and adequate notice of the meeting and the findings of the other members of the board shall be recorded, along with the action taken, in the minutes of the board of trustees. If the charges are, by an affirmative vote of two-thirds of the members of the board, found to be true, the board of trustees shall declare the office of the offending member to be vacant.

Nothing in this section shall be construed to limit the authority of a board of trustees to hold a hearing as provided herein upon evidence known or presented to it. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first and second sentences.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first and second sentences.

§ 115D-20. Powers and duties of trustees.

The trustees of each institution shall constitute the local administrative board of such institution, with such powers and duties as are provided in this Chapter and as are delegated to it by the State Board of Community Colleges. The powers and duties of trustees shall include the following:

- (1) To elect a president or chief administrative officer of the institution for such term and under such conditions as the trustees may fix, such election to be subject to the approval of the State Board of Community Colleges.
- (2) To elect or employ all other personnel of the institution upon nomination by the president or chief administrative officer, subject to standards established by the State Board of Community Colleges. Trustees may delegate the authority of employing such other personnel to its president or chief administrative officer.
- (3) To purchase any land, easement, or right-of-way which shall be necessary for the proper operation of the institution, upon approval of the State Board of Community Colleges, if necessary, to acquire land by condemnation in the same manner and under the same procedures as provided in Article 2, Chapter 40 of the General Statutes. For the purpose of condemnation, the determination by the trustees as to the location and amount of land to be taken and the necessity thereof shall be conclusive.
- (4) To apply the standards and requirements for admission and graduation of students and other standards established by the State Board of Community Colleges.
- (5) To receive and accept donations, gifts, bequests, and the like from private donors and to apply them or invest any of them and apply the proceeds for purposes and upon the terms which the donor may prescribe and which are consistent with the provisions of this Chapter and the regulations of the State Board of Community Colleges.
- (6) To provide all or part of the instructional services for the institution by contracting with other public or private organizations or institutions in accordance with regulations and standards adopted by the State Board of Community Colleges.
- (7) To perform such other acts and do such other things as may be necessary or proper for the exercise of the foregoing specific powers, including the adoption and enforcement of all reasonable rules, regulations, and bylaws for the government and operation of the institution under this Chapter and for the discipline of students.
- (8) If a board of trustees of an institution provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 901, s. 2.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" throughout the section.

The 1979, 2nd Sess., amendment, effective

Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" throughout the section.

The 1981 amendment, effective October 1, 1981, added subdivision (8).

§ 115D-21. Traffic regulations; fines and penalties.

(a) All of the provisions of Chapter 20 of the General Statutes relating to the use of highways of the State of North Carolina and the operation of motor vehicles thereon shall apply to the streets, roads, alleys and driveways on the campuses of all institutions in the North Carolina Community College System. Any person violating any of the provisions of Chapter 20 of the General Statutes in or on the streets, roads, alleys and driveways on the campuses of institutions in the North Carolina Community College System shall, upon conviction thereof, be punished as prescribed in this section and as provided by Chapter 20 of the General Statutes relating to motor vehicles. Nothing contained in this section shall be construed as in any way interfering with the ownership and control of the streets, roads, alleys and driveways on the campuses of institutions in the system as is now vested by law in the trustees of each individual institution in the North Carolina Community College System.

(b) The trustees are authorized and empowered to make additional rules and regulations and to adopt additional ordinances with respect to the use of the streets, roads, alleys and driveways and to establish parking areas on or off the campuses not inconsistent with the provisions of Chapter 20 of the General Statutes of North Carolina. Upon investigation, the trustees may determine and fix speed limits on streets, roads, alleys, and driveways subject to such rules, regulations, and ordinances, lower than those provided in G.S. 20-141. The trustees may make reasonable provisions for the towing or removal of unattended vehicles found to be in violation of rules, regulations and ordinances. All rules, regulations and ordinances adopted pursuant to the authority of this section shall be recorded in the proceedings of the trustees; shall be printed; and copies of such rules, regulations and ordinances shall be filed in the office of the Secretary of State of North Carolina. Any person violating any such rules, regulations, or ordinances shall, upon conviction thereof in a legally constituted court of the State of North Carolina, be guilty of a misdemeanor, and shall be punishable by a fine not to exceed fifty dollars (\$50.00) or imprisonment for a period of time not to exceed 30 days or, in the discretion of the court, both such fine and imprisonment.

(c) The trustees may by rules, regulations, or ordinances provide for a system of registration of all motor vehicles where the owner or operator does park on the campus or keeps said vehicle on the campus. The trustees shall cause to be posted at appropriate places on campus notice to the public of applicable parking and traffic rules, regulations, and ordinances governing the campus over which it has jurisdiction. The trustees may by rules, regulations, or ordinances establish or cause to have established a system of citations that may be issued to owners or operators of motor vehicles who violate established rules, regulations, or ordinances. The trustees shall provide for the administration of said system of citations; establish or cause to be established a system of fines to be levied for the violation of established rules, regulations and ordinances; and enforce or cause to be enforced the collection of said fines. The fine for each offense shall not exceed five dollars (\$5.00), which funds shall be retained in the institution and expended in the discretion of the trustees. The trustees shall be empowered to exercise the right to prohibit repeated violators of such rules, regulations, or ordinances from parking on the campus. (1971, c. 795, ss. 1-3; 1979, c. 462, s. 2.)

§ 115D-22. State Retirement System for Teachers and State Employees; social security.

Solely for the purpose of applying the provisions of Chapter 135 of the General Statutes of North Carolina, "Retirement System for Teachers and State Employees, Social Security," the institutions of this Chapter are included within the definition of the term "Public school," and the institutional employees are included within the definition of the term "Teacher," as these terms are defined in G.S. 135-1. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-23. Workers' Compensation Act applicable to institutional employees.

The provisions of Chapter 97 of the General Statutes of North Carolina, the Workers' Compensation Act, shall apply to all institutional employees. The State Board of Community Colleges shall make the necessary arrangements to carry out those provisions of Chapter 97 which are applicable to employees whose wages are paid in whole or in part from State funds. The State shall be liable for compensation, based upon the average weekly wage as defined in the act, of an employee regardless of the portion of his wage paid from other than State funds.

The board of trustees of each institution shall be liable for workers' compensation for employees whose salaries or wages are paid by the board entirely from local public or special funds. Each board of trustees is authorized to purchase insurance to cover workers' compensation liability and to include the cost of insurance in the annual budget of the institution.

The provisions of this section shall not apply to any person, firm or corporation making voluntary contributions to institutions for any purpose, and such a person, firm, or corporation shall not be liable for the payment of any sum of money under the provisions of this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 714, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the second sentence of the first paragraph.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the second sentence of the first paragraph.

§ 115D-24. Waiver of governmental immunity from liability for negligence of agents and employees of institutions; liability insurance.

The board of trustees of any institution, by obtaining liability insurance as provided in G.S. 115D-53, is authorized to waive its governmental immunity from liability for the death or injury of person or for property damage caused by the negligence or tort of any agent or employee of the board of trustees when the agent or employee is acting within the scope of his authority or the course of his employment. All automobiles, buses, trucks, or other motor vehicles intended primarily for use on the public roads and highways which are the property of a board of trustees shall be insured at all times with liability insurance as provided in G.S. 115D-53. Governmental immunity shall be deemed to have been waived by the act of obtaining liability insurance, but only to the extent that the board is indemnified for the negligence or torts of its agents and employees and only as to claims arising after the procurement

of liability insurance and while such insurance is in force. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-25. Purchase of annuity or retirement income contracts for employees.

Notwithstanding any provision of law relating to salaries or salary schedules for the pay of faculty members, administrative officers, or any other employees of community colleges or technical institutes, the board of trustees of any of the above institutions may authorize the finance officer or agent of same to enter into annual contracts with any of the above officers, agents and employees which provide for reductions in salaries below the total established compensation or salary schedule for a term of one year. The financial officer or agent shall use the funds derived from the reduction in the salary of the officer, agent or employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said officer, agent or employee. An officer, agent or employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of the salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the officer, agent or employee before his election for a salary reduction has become effective. The agreement for salary reductions referred to in this section shall be effected under any necessary regulations and procedures adopted by the State Board of Community Colleges and on forms prepared by the State Board of Community Colleges. Notwithstanding any other provisions of this section or law, the amount by which the salary of an officer, agent or employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, and in computing and providing matching funds for retirement system purposes. (1965, c. 366; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the next-to-last sentence.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the next-to-last sentence.

§ 115D-26. Conflict of interest.

All local trustees and employees of community colleges and technical institutes covered under this Chapter must adhere to the conflict of interest provisions found in G.S. 14-236. (1981, c. 157, s. 5.)

§§ 115D-27 to 115D-30: Reserved for future codification purposes.

ARTICLE 3.

Financial Support.

§ 115D-31. State financial support of institutions.

(a) The State Board of Community Colleges shall be responsible for providing, from sources available to the State Board, funds to meet the financial needs of institutions, as determined by policies and regulations of the State Board, for the following budget items:

- (1) Plant Fund. — Furniture and equipment for administrative and instructional purposes, library books, and other items of capital outlay approved by the State Board. Provided, the State Board may, on an equal matching-fund basis from appropriations made by the State for the purpose, grant funds to individual institutions for the purchase of land, construction and remodeling of institutional buildings determined by the State Board to be necessary for the instructional programs or administration of such institutions. For the purpose of determining amount of matching State funds, local funds shall include expenditures made prior to the enactment of this Chapter or prior to an institution becoming a community college or technical institute pursuant to the provisions of this Chapter, when such expenditures were made for the purchase of land, construction, and remodeling of institutional buildings subsequently determined by the State Board to be necessary as herein specified, and provided such local expenditures have not previously been used as the basis for obtaining matching State funds under the provisions of this Chapter or any other laws of the State.
- (2) Current Operating Expenses:
 - a. General administration. — Salaries and other costs as determined by the State Board necessary to carry out the functions of general administration.
 - b. Instructional services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of instructional services.
 - c. Support services. — Salaries and other costs as determined by the State Board necessary to carry out the functions of support services.
- (3) Additional Support for Regional Institutions as Defined in G.S. 115D-2(4). — Matching funds to be used with local funds to meet the financial needs of the regional institutions for the items set out in G.S. 115D-32(a)(2)a. Amount of matching funds to be provided by the State under this section shall be determined as follows: The population of the administrative area in which the regional institution is located shall be called the "local factor," the combined populations of all other counties served by the institution shall be called the "State factor." When the budget for the items listed in G.S. 115D-32(a)(2)a has been approved under the procedures set out in G.S. 115D-45, the administrative area in which the regional institution is located shall provide a percentage to be determined by dividing the local factor by the sum of the local factor and the State factor. The State shall provide a percentage of the necessary funds to meet this budget, the percentage to be determined by dividing the State factor by the sum of the local factor and the State factor. If the local administrative area provides

less than its proportionate share, the amount of State funds provided shall be reduced by the same proportion as were the administrative area funds.

Wherever the word "population" is used in this subdivision, it shall mean the population of the particular area in accordance with the latest United States census.

(b) The State Board is authorized to accept, receive, use, or reallocate to the institutions any federal funds or aids that have been or may be appropriated by the government of the United States for the encouragement and improvement of any phase of the programs of the institutions. (1963, c. 448, s. 23; 1973, c. 590, ss. 2, 3; c. 637, s. 1; 1979, c. 462, s. 2; c. 896, s. 13; c. 946, s. 1; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 2.)

Cross References. — As to budgeting, accounting and fiscal management, see §§ 115D-54 to 115D-58.12.

Editor's Note. — Section 97-1.1 provides that references to "workmen's compensation" shall be deemed to refer to "workers' compensation."

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" throughout the section.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" throughout the section.

Session Laws 1979, c. 946, s. 1, added a new subdivision (3) of subsection (a), which subsequently was repealed by the 1981 amendment, and renumbered the former subdivision (3) of subsection (a) as subdivision (4), which again was renumbered as subdivision (3) by the 1981 amendment.

The 1981 amendment inserted "State" preceding the second and third uses of the word "Board" in the introductory sentence of subsection (a), substituted "Plant Fund" for "Capital outlay" as the heading of subdivision (a)(1) and inserted "State" in the first sentence, deleted "of Community Colleges" following "Board" wherever it appears in the second and third sentences, deleted "local" preceding "expenditures" and inserted "of land" following "purchase" in the third sentence in that subdivision. The amendment rewrote subdivision (a)(2), deleted former subdivision (a)(3) which provided that the current expense of operating motor vehicles to support certain budget items was reimbursable from State funds, renumbered former subdivision (a)(4) as subdivision (a)(3) and in that subdivision substituted "115D-32(a)(2)a" for "115D-32" in the first and third sentences, deleted "The" preceding "amount" in the second sentence and substituted "United States" for "U.S." in the last sentence. The amendment deleted "of Community Colleges" following "Board" in subsection (b).

§ 115D-32. Local financial support of institutions.

(a) The tax-levying authority of each institution shall be responsible for providing, in accordance with the provisions of G.S. 115D-33 or 115D-34, as appropriate, adequate funds to meet the financial needs of the institutions for the following budget items:

- (1) Plant Fund: Acquisition of land; erection of all buildings; alterations and additions to buildings; purchase of automobiles, buses, trucks, and other motor vehicles; purchase or rental of all equipment necessary for the maintenance of buildings and grounds and operation of plants; and purchase of all furniture and equipment not provided for administrative and instructional purposes.
- (2) Current expenses:
 - a. Plant operation and maintenance:
 1. Salaries of janitors, maids, watchmen, maintenance and repair employees.
 2. Cost of fuel, water, power, and telephones.
 3. Cost of janitorial supplies and materials.
 4. Cost of operation of motor vehicles.

5. Cost of maintenance and repairs of buildings and grounds.
6. Maintenance and replacement of furniture and equipment provided from local funds.
7. Maintenance of plant heating, electrical, and plumbing equipment.
8. Maintenance of all other equipment, including motor vehicles, provided by local funds.
9. Rental of land and buildings.
10. Any other expenses necessary for plant operation and maintenance.

b. Support services:

1. Cost of insurance for buildings, contents, motor vehicles, workers' compensation for institutional employees paid from local funds, and other necessary insurance.
2. Any tort claims awarded against the institution due to the negligence of the institutional employees.
3. Cost of bonding institutional employees for the protection of local funds and property.
4. Cost of elections held in accordance with G.S. 115D-33 and 115D-35.
5. Legal fees incurred in connection with local administration and operation of the institution.

(b) The board of trustees of each institution may apply local public funds provided in accordance with G.S. 115D-33(a), as appropriate, or private funds, or both, to the supplementation of items of the current expense budget financed from State funds, provided a budget is submitted in accordance with G.S. 115D-54.

(c) The board of trustees of each institution may apply institutional funds provided in accordance with G.S. 115D-54(3) [G.S. 115D-54(b)(3)] for such purposes as may be determined by the board of trustees of the institution. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 3.)

Cross References. — As to budgeting, accounting and fiscal management, see §§ 115D-54 to 115D-58.12.

Editor's Note. — Section 97-1.1 provides that references to "workmen's" compensation shall be deemed to refer to "workers' compensation."

Effect of Amendments. — The 1981 amendment substituted "Plant Fund" for "Capital

outlay" as the heading of subdivision (a)(1) and inserted "or rental" in that subdivision, rewrote subdivision (a)(2), deleted "or 115D-34(a)" following the reference to G.S. 115D-33(a), deleted "supplemental current expense" following "provided a" and substituted "115D-54" for "G.S. 115D-45(3)" in subsection (b) and added subsection (c).

§ 115D-33. Providing local public funds for institutions established under this Chapter; elections.

(a) Except as provided in G.S. 115D-34, the tax-levying authority of an institution may provide for local financial support of the institution as follows:

- (1) By appropriations from nontax revenues in a manner consistent with the Local Government Budget and Fiscal Control Act, provided the continuing authority to make such appropriations shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question in an election held for such purpose, or
- (2) By a special annual levy of taxes within a maximum annual rate which maximum rate shall have been approved by a majority of the qualified voters of the administrative area who shall vote on the question of

establishing or increasing the maximum annual rate in an election held for such purpose or both, and

(3) By issuance of bonds, in the case of capital outlay funds, provided that each issuance of bonds shall be approved by a majority of the qualified voters of each county of the administrative area who shall vote on the question in an election held for that purpose. All bonds shall be subject to the Local Government Finance Act (Chapter 159) and shall be issued pursuant to Subchapter IV, Long-Term Financing, (§ 159-43 et seq.) of Chapter 159 of the General Statutes.

(b) At the election on the question of approving authority of the board of commissioners of each county in an administrative area (the tax-levying authority) to appropriate funds from nontax revenues or a special annual levy of taxes or both, the ballot furnished the qualified voters in each county may be worded substantially as follows: "For the authority of the board of commissioners to appropriate funds either from nontax revenues or from a special annual levy of taxes not to exceed an annual rate of cents per one hundred dollars (\$100.00) of assessed property valuation, or both, for the financial support of (name of the institution)" plus any other pertinent information and "Against the authority of the board of commissioners, etc.," with a square before each proposition, in which the voter may make a cross mark (X), but any other form of ballot containing adequate information and properly stating the question to be voted upon shall be construed as being in compliance with this section.

(c) The question of approving authority to appropriate funds, to levy special taxes and the question of approving an issue of bonds, when approval of each or both shall be necessary for the establishment or conversion of an institution, shall be submitted at the same election.

(d) All elections shall be held in the same manner as elections held under Article 4, Chapter 159, of the General Statutes, the Local Government Bond Act, and may be held at any time fixed by the tax-levying authority of the administrative area or proposed administrative area of the institution for which such election is to be held.

(e) The State Board of Community Colleges shall ascertain that authority to provide adequate funds for the establishment and operation of an institution has been approved by the voters of a proposed administrative area before granting final approval for the establishment of an institution.

(f) Notwithstanding any present provisions of this Chapter, the tax-levying authority of each institution may at its discretion and upon its own motion provide by appropriations of nontax revenue, tax revenue, or both, funds for the support of institutional purposes as set forth in G.S. 115D-32; but nothing herein shall be construed to authorize the issuance of bonds without a vote of the people. (1963, c. 448, s. 23; 1971, c. 402; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in subsection (e).

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in subsection (e).

§ 115D-34. Providing local public funds for institutions previously established.

(a) For counties in which, immediately prior to the enactment of this Chapter, there was in operation or authorized a public community college or industrial education center which hereafter shall be operated pursuant to the

provisions of this Chapter, the following provisions shall apply in providing local financial support for each such institution:

- (1) Community colleges: The board of commissioners of a county in which is located a public community college heretofore operated or authorized to operate pursuant to Article 3, Chapter 116, of the General Statutes of North Carolina, may continue to levy special taxes annually for the local financial support of the college as provided in G.S. 115D-32, to the maximum rate last approved by the voters of the county in accordance with the above Article. The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the Local Government Budget and Fiscal Control Act, from nontax revenues. The question of increasing the maximum annual rate of a special tax may be submitted at an election held in accordance with the provisions of G.S. 115D-33(d) and the appropriate provisions of G.S. 115D-35.
- (2) Industrial education centers: The board of commissioners of a county in which is located an industrial education center heretofore operated or authorized to operate as part of the public school system and which hereafter shall be operated as a technical institute or community college as defined in this Chapter may levy special taxes annually at a rate sufficient to provide funds for the financial support of the institute or college as required by G.S. 115D-32(a). The board of commissioners may also provide all or part of such funds by appropriations, in a manner consistent with the Local Government Budget and Fiscal Control Act, from nontax revenues. The board of commissioners is authorized to provide additional funds, either by special tax levies or by appropriations from nontax revenues, or both, to an amount equal to that required to be provided above, for the purpose of supplementing the current expense budget of the institute or college financed from State funds.
- (b) The board of commissioners of a county in which is located one of the above public community colleges or industrial education centers may provide funds for capital outlay for such institution by the issuance of bonds. All bonds shall be issued in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.
- (c) Public funds provided a community college or industrial education center prior to its becoming subject to the provisions of this Chapter and which remain to the credit of the institution upon its becoming subject to these provisions shall be expended only for the purposes prescribed by law when such funds were provided the institution. (1963, c. 448, s. 23; 1965, c. 842, s. 1; 1979, c. 462, s. 2.)

§ 115D-35. Requests for elections to provide funds for institutions.

(a) Formal requests for elections on the question of authority to appropriate nontax revenues or levy special taxes, or both, and to issue bonds, when such elections are to be held for the purpose of establishing an institution, shall be originated and submitted only in the following manner:

- (1) Proposed multiple-county administrative areas: Formal requests for elections may be submitted jointly by all county boards of education in the proposed administrative area, or by petition of fifteen percent (15%) of the number of qualified voters of the proposed area who voted in the last preceding election for Governor, to the boards of commissioners of all counties in the proposed area, who may fix the time for such election by joint resolution which shall be entered in the minutes of each board.

- (2) Proposed single-county administrative area: Formal requests shall be submitted by the board of education of any public school administrative unit within the county of the proposed administrative area or by petition of fifteen percent (15%) of the number of qualified voters of the county who voted in the last preceding election for Governor, to the board of commissioners of the county of the proposed administrative area, who may fix the time for such election by resolution which shall be entered in the minutes of the board.

(b) Formal requests for elections on any of the questions specified in (a) above, or on the question of increasing the maximum annual rate of special taxes for the financial support of an institution with a properly established board of trustees, may be submitted to the tax-levying authority only by such board of trustees.

(c) All formal requests for elections regarding the levy of special taxes shall state the maximum annual rate for which approval is to be sought in an election.

(d) Nothing in this section shall be construed to deny or limit the power of the tax-levying authority of an institution to hold elections, of its own motion, on any or all the questions provided in this section, subject to the provisions of this Article. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-36. Elections on question of conversion of institutions and issuance of bonds therefor.

Whenever the board of trustees of an institution requests the State Board of Community Colleges to convert the institution from a technical institute to a community college, the Board shall require, as a prerequisite to such conversion:

- (1) The authorization by the voters of the administrative area of an annual levy of taxes within a specified maximum annual rate sufficient to provide the required local financial support for the converted institution, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35.
- (2) The approval by the voters of the administrative area of the issuance of bonds for capital outlay necessary for the conversion of the institution, in an election held in accordance with the appropriate provisions of G.S. 115D-33 and 115D-35. (1968, c. 443, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the introductory paragraph.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the introductory paragraph.

§ 115D-37. Payment of expenses of special elections under Chapter.

The cost of special elections held under the authority of this Chapter in connection with the establishment of an institution shall be paid out of the general fund of the county or counties which shall conduct such elections. All special elections held on behalf of a duly established institution shall be paid by such institution and the expenses may be included in the annual institutional budgets. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-38. Authority to issue bonds and notes, to levy taxes and to appropriate nontax revenues.

Counties are authorized to issue bonds and notes and to levy special taxes to meet payments of principal and interest on such bonds or notes and to levy special taxes for the special purpose of providing local financial support of an institution and otherwise to appropriate nontax revenues for the financial support of an institution, in the manner and for the purposes provided in this Chapter.

Taxes authorized by this section are declared to be for a special purpose and may be levied notwithstanding any constitutional limitation or limitations imposed by any general or special law. (1963, c. 448, s. 23; 1979, c. 462, s. 2.)

§ 115D-39. Student tuition and fees.

The State Board of Community Colleges shall fix and regulate all tuition and fees charged to students for applying to or attending any institution pursuant to this Chapter.

The receipts from all student tuition and fees, other than student activity fees, shall be State funds and shall be deposited as provided by regulations of the State Board of Community Colleges.

The legal resident limitation with respect to tuition, set forth in G.S. 116-143.1 and 116-143.2, shall apply to students attending institutions operating pursuant to this Chapter. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 4.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first and second paragraphs.

The 1979, 2nd Sess., amendment, effective

Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first and second paragraphs.

The 1981 amendment substituted "shall" for "may" in the first sentence.

§§ 115D-40 to 115D-44: Reserved for future codification purposes.

ARTICLE 4.

Budgeting, Accounting, and Fiscal Management.

§§ 115D-45 to 115D-53: Recodified as 115D-54 to 115D-58.12.

Editor's Note. — This Article was rewritten by Session Laws 1981, c. 157, s. 1, effective March 31, 1981, and has been recodified as

Article 4A, § 115D-54 to 115D-58.12 of this Chapter.

ARTICLE 4A.

*Budgeting, Accounting, and Fiscal Management.***§ 115D-54. Preparation and submission of institutional budget.**

(a) On or before the first day of May of each year, trustees of each institution shall prepare for submission a budget request as provided in G.S. 115D-54(b) on forms provided by the State Board of Community Colleges. The budget shall be based on estimates of available funds if provided by the funding authorities or as estimated by the institution. The State Current Fund shall be based on available funds. All other funds shall be based on needs as determined by the board of trustees and shall include the following:

- (1) State Current Fund.
- (2) County Current Fund.
- (3) Institutional Fund.
- (4) Plant Fund.

(b) The budget shall be prepared and submitted for approval according to the following procedures:

- (1) State Current Fund Budget. — The budget request shall contain the items of current operating expenses as provided in G.S. 115D-31 for which State funds are requested. The approving authority for the State current fund budget request shall be the board of trustees and the State Board of Community Colleges.
- (2) County Current Fund Budget. — The budget request shall contain the items of current operating expenses, as provided in G.S. 115D-32, for which county funds are requested. The approving authority for the county current fund budget request shall be the board of trustees and the local tax-levying authority. The State Board of Community Colleges shall have approving authority pursuant to G.S. 115D-33 with respect to required local funding.
- (3) Institutional Fund Budget. — The budget request shall contain the items of current operating expenses, loan funds, scholarship funds, auxiliary enterprises, State, private, and federal grants and contracts and endowment funds for which institutional funds are requested. The approving authority for the institutional fund budget request shall be the board of trustees of the institution.
- (4) Plant Fund Budget. — The budget request shall contain the items of capital outlay, as provided in G.S. 115D-31 and 115D-32, for which funds are requested, from whatever source. The budget shall be submitted first to the local tax-levying authority, which shall approve or disapprove, in whole or in part, that portion of the budget requesting local public funds. Upon approval by the local tax-levying authority, the budget shall be submitted by the board of trustees to the State Board of Community Colleges, which may approve or disapprove, in whole or in part, that portion of the budget requesting State or federal funds. Plant funds provided for construction and major renovations shall be permanent appropriations until the conclusion of the project for which appropriated.

(c) No public funds shall be provided an institution, either by the tax-levying authority or by the State Board of Community Colleges, except in accordance with the budget provisions of this Article.

(d) The preparation of a budget for and the payment of interest and principal on indebtedness incurred on behalf of an institution shall be the responsibility of the county finance officer or county finance officers of the administrative

areas, and the board of trustees of the institution shall have no duty or responsibility in this connection.

(e) "Trust and Agency Fund" means funds held by an institution as custodian or fiscal agent for others such as student organizations, individual students, or faculty members. Trust and agency funds need not be budgeted. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

Editor's Note. — This Article is Article 4 of this Chapter as rewritten by Session Laws 1981, c. 157, s. 1, effective March 31, 1981, and recodified. Where appropriate, the historical

citations to the sections of the former Article have been added to corresponding sections of the new Article.

§ 115D-55. Budget management.

(a) Approval of Budget by Local Tax-Levying Authority. — Not later than May 15, or such later date as may be fixed by the local tax-levying authority, the budget shall be submitted to the local tax-levying authority for approval of that portion within its authority as stated in G.S. 115D-54(b). On or before July 1, or such later date as may be agreeable to the board of trustees, but in no instance later than September 1, the local tax-levying authority shall determine the amount of county revenue to be appropriated to an institution for the budget year. The local tax-levying authority may allocate part or all of an appropriation by purpose, function, or project as defined in the budget manual as adopted by the State Board of Community Colleges.

The local tax-levying authority shall have full authority to call for all books, records, audit reports, and other information bearing on the financial operation of the institution except records dealing with specific persons for which the persons' rights of privacy are protected by either federal or State law.

Nothing in this Article shall be construed to place a duty on the local tax-levying authority to fund a deficit incurred by an institution through failure of the institution to comply with the provisions of this Article or rules and regulations issued pursuant hereto.

(b) Approval of Budget by State Board of Community Colleges. — Not later than 10 days after notification by the local tax-levying authority of the amount appropriated, the budget shall be submitted to the State Board of Community Colleges for approval of that portion within its authority as stated in G.S. 115D-54(b). The State Board of Community Colleges shall approve the budget for each institution in such amount as the State Board decides is available and necessary for the operation of the institution.

The State Board of Community Colleges shall have authority to call for all books, records, audit reports and other information bearing on the financial operation of the institution except records dealing with specific persons for which the persons' rights of privacy are protected by either federal or State law.

Nothing in this Article shall be construed to place a duty on the State Board of Community Colleges to fund a deficit incurred by an institution through failure of the institution to comply with the provisions of this Article or rules and regulations issued pursuant hereto. (1981, c. 157, s. 1.)

§ 115D-56. Final adoption of budget.

Upon notification of approval by the State Board of Community Colleges, the board of trustees shall adopt a budget resolution as defined in the budget manual as adopted by the State Board of Community Colleges, which shall comply with the resolution of the State Board and the appropriations of the tax-levying authorities and all other funding agencies. (1981, c. 157, s. 1.)

§ 115D-57. Interim budget.

In case the adoption of the budget resolution is delayed until after July 1, the board of trustees shall authorize the president, through interim provisions, to pay salaries and the other ordinary expenses of the institution for the interval between the beginning of the fiscal year and the adoption of the budget resolution. Interim provisions so made shall be charged to the proper allocations in the budget resolution. (1981, c. 157, s. 1.)

§ 115D-58. Amendments to the budget; budget transfers.

(a) The State Board of Community Colleges shall adopt rules and regulations governing the amendment of the budget for an institution. The board of trustees may amend the budget at any time after its adoption pursuant to the rules and regulations of the State Board.

(b) If the local tax-levying authority allocates part or all of an appropriation pursuant to G.S. 115D-55, the board of trustees must obtain approval of the local tax-levying authority for an amendment to the budget which increases or decreases the amount of that appropriation allocated to a purpose, function, or project by twenty-five percent (25%) or more from the amount contained in the budget ordinance adopted by the local tax-levying authority or such lesser percentage as specified by the local tax-levying authority in the original budget ordinance, so long as such percentage is not less than ten percent (10%).

(c) The board of trustees may, by appropriate resolution, authorize the president to transfer moneys from one appropriation to another within the same fund, subject to any limitations established by regulations adopted pursuant to this section, and subject to any limitations and procedures prescribed by the board of trustees or State for federal laws or regulations. Any such transfer shall be reported to the board of trustees at its next regular meeting and entered into its minutes. (1981, c. 157, s. 1.)

§ 115D-58.1. Federal contracts and grants.

The board of trustees of any institution may apply for and accept grants from the federal government or any agency thereof, in order to carry out the institution's mission. In exercising this authority, the board of trustees may enter into and carry out contracts with the federal government or any agency thereof, may agree to and comply with any lawful and reasonable condition attached to such a grant, and may make expenditures from any funds so granted. The State Board of Community Colleges shall adopt rules and regulations governing the application for and the acceptance of grants under this section. (1981, c. 157, s. 1.)

§ 115D-58.2. Allocation of revenue to the institution by the local tax-levying authority.

(a) The local tax-levying authority of each institution shall provide, as needed, funds to meet the monthly expenditures, including salaries and other necessary operating expenses, as set forth in a statement prepared by the board of trustees and in accordance with the approved budget. Upon the basis of the approved budget, the county finance officer shall make available to the institution the moneys requested by the board of trustees no later than the fifteenth day of the month for which funds are requested.

(b) Funds received by the trustees of an institution from insurance payments for loss or damage to buildings shall be used for the repair or replacement of such buildings, or, if the buildings are not repaired or replaced, to reduce proportionally the institutional indebtedness borne by the counties of the

administrative area of the institution receiving the insurance payments. If such payments, which are not used to repair or replace institutional buildings, exceed the total institutional indebtedness borne by all counties of the administrative area, such excess funds shall remain to the credit of the institution and shall be applied to the next succeeding plant fund budget until the excess funds shall be expended. Funds received by the trustees of an institution for loss or damage to the contents of buildings shall be divided between the board of trustees and the State Board of Community Colleges in proportion to the value of the lost contents owned by the board of trustees and the State, respectively. Until these funds shall have been expended, they shall either be used for repair or replacement of lost contents or be credited to the institution for succeeding plant and current expense budgets as appropriate. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.3. Provision for disbursement of State money.

The deposit of money in the State treasury to the credit of the institution shall be made in monthly installments, and additionally as necessary, at such time and in such manner as may be convenient for the operation of the community college system. Before an installment is credited, the institution shall certify to the Department of Community Colleges, the expenditures to be made by the institution from the State Current Fund during the month.

The Department of Community Colleges shall determine whether the moneys requisitioned are due the institution, and upon determining the amount due, shall cause the requisite amount to be credited to the institution. Upon receiving notice from the Department of Community Colleges that the amount has been placed to the credit of the institution, the institution may issue State warrants up to the amount so certified. Money in the State Current Fund and other moneys made available by the State Board of Community Colleges shall be released only on warrants drawn on the State Treasurer, signed by two officials of the institution designated for this purpose by the board of trustees. (1963, c. 448, s. 23; 1965, c. 448, s. 2; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.4. Provisions for disbursement of local money.

All local public funds received by or credited to an institution shall be disbursed on checks signed by the two officials of the institution who shall have been designated by the board of trustees. The officials so designated shall countersign a check only if the funds required by such check are within the amount of funds remaining to the credit of the institution and are within the unencumbered balance of the appropriation for the item of expenditure according to the approved budgets of the institution. Each check shall be accompanied by an invoice, statement, voucher, or other basic document which indicates, to the satisfaction of the signing officials, that the issuance of such check is proper. (1963, c. 448, s. 23; 1965, c. 488, s. 2; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.5. Accounting system.

(a) Each institution shall establish and maintain an accounting system consistent with procedures as prescribed by the Department of Community Colleges and the State Auditor, which shows its assets, liabilities, equities, revenues, and expenditures.

(b) Each institution shall be governed in its purchasing of all supplies, equipment, and materials by contracts made by or with the approval of the

Purchase and Contract Division of the Department of Administration. No contract shall be made by any board of trustees for purchases unless provision has been made in the budget of the institution to provide payment thereof. In order to protect the State purchase contracts, it is the duty of the board of trustees and administrative officers of each institution to pay for such purchases promptly in accordance with the contract of purchase. Equipment shall be titled to the State Board of Community Colleges if derived from State or federal funds.

(c) The State Auditor shall be responsible for conducting annually an audit of the receipts, expenditures, and fiscal transactions of each institution in addition to any other power and duty currently or hereafter conferred on him by statute. He shall in the administration of this Article consult with and advise the State Board of Community Colleges on matters relating to the administration of the budgets and fiscal affairs of the community college system.

(d) The annual audits shall be completed as near to the close of the fiscal year as practicable and copies of each audit, inclusive of all accounts, shall be filed with the chairman of the board of trustees, the executive head of the institution, the chief fiscal officer of the institution, the county finance officer of each county of the administrative area, the State Board of Community Colleges and the chairman of the local government commission. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.6. Investment of idle cash.

(a) The institution may deposit at interest or invest all or part of the cash balance of any fund in an official depository of the institution. The institution shall manage investments subject to whatever restrictions and directions the board of trustees may impose. The institution shall have the power to purchase, sell, and exchange securities on behalf of the board of trustees. The investment program shall be so managed that investments and deposits can be converted into cash when needed.

(b) Moneys may be deposited at interest in any bank, savings and loan association or trust company in this State in the form of certificates of deposit or such other forms of time deposits as may be approved for county governments. Investment deposits shall be secured as provided in G.S. 159-31(b).

(c) Moneys may be invested in the form of investments pursuant to G.S. 159-30(c) to county governments and no others. Money in endowment funds may be invested pursuant to G.S. 147-69.2. Provided, however, the institution may elect to deposit at interest any local funds with the State Treasurer for investment as special trust funds pursuant to the provisions of G.S. 147-69.3, and the interest thereon shall accrue to the institution as local funds.

(d) Investment securities may be bought, sold, and traded by private negotiation, and the institutions may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program from local funds. The institution shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the official designated by the board of trustees. (1981, c. 157, s. 1; c. 612, s. 1.)

Effect of Amendments. — The 1981 amendment inserted “, savings and loan association” in the first sentence of subsection (b).

§ 115D-58.7. Selection of depository; deposits to be secured.

(a) Each board of trustees shall designate as the official depositories of the institution one or more banks, savings and loan associations or trust companies in this State. It shall be unlawful for any money belonging to an institution, other than moneys required to be deposited with the State Treasurer, to be deposited in any place, bank, savings and loan associations, or trust company other than an official depository except as permitted in G.S. 115D-58.6(b). However, public moneys may be deposited in official depositories in Negotiable Order of Withdrawal (NOW) accounts where permitted by applicable federal or State regulations.

(b) Money deposited in an official depository or deposited at interest pursuant to G.S. 115D-58.6(b) shall be secured in the manner prescribed in G.S. 159-31(b). When deposits are secured in accordance with this subsection, no public officer or employee may be held liable for any losses sustained by an institution because of the default or insolvency of the depository. (1981, c. 157, s. 1; c. 612, s. 1.)

Effect of Amendments. — The 1981 amendment inserted “savings and loan associations” in the first and second sentences of subsection (a).

§ 115D-58.8. Facsimile signatures.

The board of trustees may provide by appropriate resolution for the use of facsimile signature machines, signature stamps, or similar devices in signing checks and drafts. The board shall charge some bonded officer or employee with the custody of the necessary machines, stamps, plates, or other devices, and that person and the sureties on his official bond are liable for any illegal, improper, or unauthorized use of them. Rules and regulations governing the use and control of the facsimile signature shall be adopted by the State Board of Community Colleges. (1981, c. 157, s. 1.)

§ 115D-58.9. Daily deposits.

All moneys regardless of source or purpose collected or received by an officer, employee, or agent of an institution shall be deposited intact in accordance with this section. Each officer, employee and agent of an institution whose duty it is to collect or receive any moneys shall deposit his collections and receipts daily. If the board of trustees gives its approval, deposits may be required only when the moneys on hand amount to as much as two hundred fifty dollars (\$250.00), but in any event, a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository. Tuition and all revenues declared by law to be State moneys or otherwise required to be deposited with the State Treasurer shall be deposited pursuant to the rules of the State Treasurer pursuant to G.S. 147-77. (1981, c. 157, s. 1.)

§ 115D-58.10. Surety bonds.

The State Board of Community Colleges shall determine what State employees and employees of institutions shall give bonds for the protection of State funds and property and the State Board is authorized to place the bonds and pay the premiums thereon from State funds.

The board of trustees of each institution shall require all institutional employees authorized to draw or approve checks or vouchers drawn on local funds, and all persons authorized or permitted to receive institutional funds from whatever source, and all persons responsible for or authorized to handle institutional property, to be bonded by a surety company authorized to do business with the State in such amount as the board of trustees deems sufficient for the protection of such property and funds. The tax-levying authority of each institution shall provide the funds necessary for the payment of the premiums of such bonds. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1981, c. 157, s. 1.)

§ 115D-58.11. Fire and casualty insurance on institutional buildings and contents.

(a) The board of trustees of each institution, in order to safeguard the investment in institutional buildings and their contents, shall:

(1) Insure and keep insured each building owned by the institution to the extent of the current insurable value, as determined by the insured and insurer, against loss by fire, lightning, and the other perils embraced in extended coverage.

(2) Insure and keep insured equipment and other contents of all institutional buildings that are the property of the institution or the State or which are used in the operation of the institution.

(b) The tax-levying authority of each institution shall provide the funds necessary for the purchase of the insurance required in G.S. 115D-58.11(a).

(c) Boards of trustees may purchase insurance from companies duly licensed and authorized to sell insurance in this State or may obtain insurance in accordance with the provisions of Article 16, Chapter 115, of the General Statutes, "State Insurance of Public School Property." (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 1.)

§ 115D-58.12. Liability insurance; tort actions against boards of trustees.

(a) Boards of trustees may purchase liability insurance only from companies duly licensed and authorized to sell insurance in this State. Each contract of insurance must, by its terms, adequately insure the board of trustees against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligence or torts of the agents and employees of such board of trustees or institution when acting within the scope of their authority or the course of their employment. Any company which enters into such a contract of insurance with a board of trustees by such act waives any defense based upon the governmental immunity of such board.

(b) Any person sustaining damages, or in case of death, his personal representative, may sue a board of trustees insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in a county of the administrative area of the institution against which the suit is brought; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal, or discretionary function of such board of trustees, to the extent that such board is insured as provided by this section.

(c) Nothing in this section shall be construed to deprive any board of trustees of any defense whatsoever to any action for damages, or to restrict, limit, or otherwise affect any such defense; and nothing in this section shall be construed to relieve any person sustaining damages or any personal representative of any decedent from any duty to give notice of such claim to the board of trustees or commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by law.

(d) No part of the pleadings which relate to or allege facts as to a defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. Liability shall not attach unless the plaintiff shall waive the right to have all issues of law and fact relating to insurance in such action determined by a jury, and such issues shall be heard and determined by the judge without resort to a jury, and the jury shall be absent during any motions, arguments, testimony, or announcements of findings of fact or conclusions of law with respect thereto, unless the defendant shall request jury trial thereon.

(e) The board of trustees of all institutions in this Chapter is authorized to pay as a necessary expense the lawful premiums of liability insurance provided in this section. (1963, c. 448, s. 23; 1979, c. 462, s. 2; 1981, c. 157, s. 1.)

§§ 115D-58.13 to 115D-58.17: Reserved for future codification purposes.

ARTICLE 5.

Special Provisions.

§ 115D-59. Multiple-county administrative areas.

Should two or more counties determine to form an administrative area for the purpose of establishing and supporting an institution, the boards of commissioners of all such counties shall jointly propose a contract to be submitted to the State Board of Community Colleges as part of the request for establishment of an institution. The contract shall provide, in terms consistent with this Chapter, for financial support of the institution, selection of trustees, termination of the contract and the administrative area, and any other necessary provisions. The State Board of Community Colleges shall have authority to approve the terms of the contract as a prerequisite for granting approval of the establishment of the institution and the administrative area. (1963, c. 448, s. 23; 1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first and third sentences.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first and third sentences.

§ 115D-60. Special provisions for Central Piedmont Community College.

(a) The board of commissioners of Mecklenburg County is authorized to provide the local financial support for the Central Piedmont Community College as provided in G.S. 115D-32 by levying a special tax to a maximum annual rate equal to the maximum rate last approved by the voters of the county for the support of the Central Piedmont Community College as operated pursuant

to Article 3, Chapter 116, of the General Statutes of North Carolina, or by appropriations from nontax revenues, or by both. The question of increasing the maximum annual rate may be submitted at an election held in accordance with the provisions of G.S. 115D-33(d) and the appropriate provisions of G.S. 115D-35.

(b) When, in the opinion of the board of trustees of said institution, the use of any building, building site, or other real property owned or held by said board is unnecessary or undesirable for the purposes of said institution the board of trustees may sell, exchange, or lease such property in the same manner as is provided by law for the sale, exchange, or lease of school property by county or city boards of education. The proceeds of any such sale or lease shall be used for capital outlay purposes. (1963, c. 448, s. 23; 1965, c. 402; 1979, c. 462, s. 2.)

§ 115D-61. Special provisions for Coastal Carolina Community College.

All local taxes heretofore authorized by the voters of Onslow County to be levied annually for the local financial support of the Onslow County Industrial Education Center may continue to be levied by the board of commissioners of Onslow County for the purpose of providing local financial support of the institution under its present name. (1967, c. 279; 1979, c. 462, s. 2.)

§ 115D-62. Trustee Association Regions.

The State is divided into six Trustee Association Regions as follows:

Region 1: The counties of Buncombe, Cherokee, Clay, Cleveland, Gaston, Graham, Haywood, Henderson, Jackson, Lincoln, Macon, McDowell, Polk, Rutherford, Swain, and Transylvania.

Region 2: The counties of Alexander, Alleghany, Ashe, Avery, Burke, Caldwell, Catawba, Davie, Iredell, Madison, Mitchell, Rowan, Surry, Watauga, Wilkes, Yadkin, and Yancey.

Region 3: The counties of Alamance, Chatham, Davidson, Caswell, Durham, Forsyth, Franklin, Granville, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Vance, Warren, and Wake.

Region 4: The counties of Anson, Cabarrus, Cumberland, Harnett, Hoke, Johnston, Lee, Mecklenburg, Montgomery, Moore, Richmond, Robeson, Scotland, Stanly, and Union.

Region 5: The counties of Bladen, Brunswick, Carteret, Craven, Columbus, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Sampson, and Wayne.

Region 6: The counties of Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Martin, Nash, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, Washington, and Wilson. (1979, c. 896, s. 9.)

§§ 115D-63 to 115D-67: Reserved for future codification purposes.

ARTICLE 6.

Textile Training School.

§ 115D-68. Creation of board of trustees; members and terms of office; no compensation.

The affairs of the North Carolina Vocational Textile School shall be managed by a board of trustees composed of nine members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof. The terms of office of the trustees appointed by the Governor shall be as follows: Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years. At the expiration of such terms, the appointments shall be made for periods of four years. In the event of any vacancy on said boards, the vacancy shall be filled by appointment by the Governor for the unexpired term of the member causing such vacancy. The members of the said board of trustees appointed by the Governor shall serve without compensation. The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed. (1955, c. 1372, art. 27, s. 1; 1963, c. 448, s. 30; 1969, c. 479; 1979, c. 462, s. 2.)

§ 115D-69. Powers of board.

The said board of trustees shall hold all the property of the North Carolina Vocational Textile School and shall have the authority to direct and manage the affairs of said school, and within available appropriations therefor, appoint a managing head and such other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of said school, shall have the right to accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of said school. Provided, however, that the said board of trustees is not authorized to accept any such funds upon any condition that said school shall be operated contrary to any provision of the Constitution or statutes of this State. (1955, c. 1372, art. 27, s. 2; 1963, c. 448, s. 30; 1979, c. 462, s. 2.)

§ 115D-70. Board vested with powers and authority of former boards.

The board of trustees acting under authority of this Article is vested with all the powers and authority of the board created under authority of Chapter 360 of the Public Laws of 1941, and the board created under authority of Chapter 806 of the Session Laws of 1971. (1955, c. 1372, art. 27, s. 3; 1963, c. 448, s. 30; 1979, c. 462, s. 2.)

§ 115D-71. Persons eligible to attend institution; subjects taught.

Persons eligible for attendance upon this institution shall be at least 16 years of age and legal residents of the State of North Carolina, as set forth in G.S. 116-143.1 and 116-143.2: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when

vacancies exist, upon payment of tuition, the amount of tuition to be determined by the board of trustees. The money thus collected is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school. The institution shall teach the general principles and practices of the textile manufacturing and related subjects. (1955, c. 1372, art. 27, s. 4; 1963, c. 448, s. 30; 1979, c. 462, s. 2.)

§§ 115D-72 to 115D-76: Reserved for future codification purposes.

ARTICLE 7.

Miscellaneous Provisions.

§ 115D-77. Nondiscrimination policy.

It is the policy of the State Board of Community Colleges and of local boards of trustees of the State of North Carolina not to discriminate among students on the basis of race, gender or national origin.

In the employment of professional and all other personnel for institutions operating pursuant to this Chapter, neither the State Board of Community Colleges nor local boards of trustees shall discriminate on the basis of race, gender or national origin. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first and second paragraphs.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first and second paragraphs.

§ 115D-78. Access to information and public records.

In accordance with Chapter 132 of the General Statutes, all rules, regulations and public records of the State Board of Community Colleges, the Department of Community Colleges, and local boards of trustees shall be available for examination and reproduction on payment of fees by any person. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education."

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes."

§ 115D-79. Open meetings.

All official meetings of the State Board of Community Colleges and of local boards of trustees shall be open to the public in accordance with the provisions of G.S. 143-318.1 through 143-318.7. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Editor's Note. — Sections 143-318.1 through 143-318.7, referred to in this section, were repealed by Session Laws 1979, c. 655, s. 1. For present provisions relating to meetings of public bodies, see §§ 143-318.9 through 143-318.18.

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education."

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes."

§ 115D-80. Rule-making procedure.

As an agency of the State, the State Board of Community Colleges is subject to the North Carolina Administrative Procedure Act, G.S. 150A-1 through 150A-64. The State Board of Community Colleges' procedures for rule-making, promulgation of rules, and the handling of contested matters shall be as set forth in those sections. Local boards of trustees are exempt from the Administrative Procedure Act. (1979, c. 462, s. 2; c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in the first sentence and "State Board of Community Colleges and Technical Institutes" for "State Board of Education's" in the second sentence.

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the first sentence and "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in the second sentence.

§ 115D-81. Saving clauses.

(a) Continuation of Existing Law. — The provisions of this Chapter, insofar as they are the same as those of existing laws, are intended as a continuation of such laws and not as new enactments. The repeal by the act enacting this Chapter of any statute or part thereof shall not revive any statute or part thereof previously repealed or suspended. The provisions of this section shall not affect title to, or ownership of, any real or personal property vested before the effective date of this section. This Chapter shall not in any way affect or repeal any local acts in conflict with the terms of this Chapter.

(b) Existing Rights and Liabilities. — The provisions of this Chapter shall not affect any act done, liability incurred or right accrued or vested, or affect any suit or prosecution pending or to be instituted to enforce any right or penalty or punish any offense under the authority of statutes repealed by the act enacting this Chapter. (1979, c. 462, s. 2.)

Chapter 116. Higher Education.

Article 1.

The University of North Carolina.

Part 2. Organization, Governance and Property of the University.

- Sec.
116-11. Powers and duties generally.
116-15. Licensing of nonpublic educational institutions; regulation of degrees.

Part 3. Constituent Institutions.

- 116-33.1. Board of trustees to permit recruiter access.
116-36. Endowment fund.
116-36.1. Regulation of institutional trust funds.
116-36.2. Regulation of special funds of individual institutions.
116-36.3. Regulation of institutional student auxiliary enterprise funds.
116-37. North Carolina Memorial Hospital board of directors; administration of hospital.
116-37.1. Center for public television.

Part 6. Traffic and Parking.

- 116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina.

Article 4.

North Carolina School of the Arts.

- 116-65. To be part of University of North Carolina; membership of Board of Trustees.

Article 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

- 116-143. State-supported institutions of higher education required to charge tuition and fees.
116-143.1. Provisions for determining resident status for tuition purposes.

Article 21.

Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.

- 116-187. Purpose of Article.
116-189. Definitions.
116-198.1 to 116-198.5. [Reserved.]

Article 21A.

Higher Educational Facilities Finance Act.

- Sec.
116-198.6. Short title.
116-198.7. Legislative findings.
116-198.8. Definitions.
116-198.9. Educational Facilities Finance Agency.
116-198.10. General powers.
116-198.11. Criteria and requirement.
116-198.12. Procedural requirements.
116-198.13. Discrimination prohibited; provisions of loan agreement or agreement of sale or lease.
116-198.14. Construction contracts.
116-198.15. Credit of State not pledged.
116-198.16. Bonds and notes.
116-198.17. Trust agreement or resolution.
116-198.18. Revenues; pledges of revenues.
116-198.19. Trust funds.
116-198.20. Remedies.
116-198.21. Investment securities.
116-198.22. Bonds or notes eligible for investment.
116-198.23. Refunding bonds or notes.
116-198.24. Annual report.
116-198.25. Officers not liable.
116-198.26. Tax exemption.
116-198.27. Conflict of interest.
116-198.28. Additional method.
116-198.29. Liberal construction.
116-198.30. Inconsistent laws inapplicable.

Article 23.

State Education Assistance Authority.

- 116-201. Purpose and definitions.
116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.
116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.
116-209. Reserve trust fund created; transfer of escheat fund; pledge of security interest for payment of bonds; administration.
116-209.3. Additional powers.
116-209.4. Authority to issue bonds.
116-209.14. Annual reports.

Sec.

Article 24.

116-209.17. Establishment of student assistance program.

Learning Institute of North Carolina.

116-209.19. Grants to students.

Sec.

116-209.24. Parental loans.

116-210, 116-211. [Repealed.]

ARTICLE 1.

The University of North Carolina.

Part 1. General Provisions.

§ 116-1. Purpose.

Editor's Note. — Session Laws 1979, c. 340, s. 1, provides: "All laws or clauses of laws of a private, local or special nature as well as all statutes or provisions of statutes which specifically refer to The University of North Carolina at Chapel Hill and its environs, including the Town of Chapel Hill and the

County of Orange, for the purpose of prohibiting or otherwise regulating the sale, barter, transportation, importation, exportation, delivery, purchase or possession or intoxicating liquors there and which conflict with any provision of Chapter 18A of the General Statutes are hereby repealed."

CASE NOTES

University and Its Subdivisions Are "Alter-egos" of State for Diversity Purposes. — The University of North Carolina and the University of North Carolina at Chapel

Hill are "alter-egos" of the State of North Carolina for purposes of federal diversity jurisdiction. *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

Part 2. Organization, Governance and Property of the University.

§ 116-3. Incorporation and corporate powers.

Extent to Which University May Sue and Be Sued. — The most logical reading of the "sue and be sued" clause is that East Carolina University may sue and be sued in its own name, but only to the extent that the State itself may sue or be sued, since the doctrine of sovereign immunity insulates the State from actions at law for damages although it does not insulate the State from judicial claims for equitable relief. *Mayberry v. Dees*, 638 F.2d 690

(4th Cir. 1981).

University and Its Subdivisions Are "Alter-egos" of State for Diversity Purposes. — The University of North Carolina and the University of North Carolina at Chapel Hill are "alter-egos" of the State of North Carolina for purposes of federal diversity jurisdiction. *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-4. Constituent institutions of the University of North Carolina.

CASE NOTES

Suit Against University Officials Barred By Eleventh Amendment. — East Carolina University is clearly a state agency and within the protection of the Eleventh Amendment; therefore, the award of damages against the

defendants in their capacity as officials of the university is in essence an award against the State and is barred in federal court unless the immunity has been waived. *Mayberry v. Dees*, 638 F.2d 690 (4th Cir. 1981).

§ 116-6. Election and terms of members of Board of Governors.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-7. General provisions concerning members of the Board of Governors.

CASE NOTES

Banking Commissioners Are State Officers within Subsection (b). — A member of the State Banking Commission is an officer of

the State within the meaning of subsection (b) of this section. *Sansom v. Johnson*, 39 N.C. App. 682, 251 S.E.2d 629 (1979).

§ 116-11. Powers and duties generally.

The powers and duties of the Board of Governors shall include the following:

- (1) The Board of Governors shall plan and develop a coordinated system of higher education in North Carolina. To this end it shall govern the 16 constituent institutions, subject to the powers and responsibilities given in this Article to the boards of trustees of the institutions, and to this end it shall maintain close liaison with the State Board of Community Colleges, the Department of Community Colleges and the private colleges and universities of the State. The Board, in consultation with representatives of the State Board of Community Colleges and of the private colleges and universities, shall prepare and from time to time revise a long-range plan for a coordinated system of higher education, supplying copies thereof to the Governor, the members of the General Assembly, the Advisory Budget Commission and the institutions. Statewide federal or State programs that provide aid to institutions or students of post-secondary education through a State agency, except those related exclusively to the community college system, shall be administered by the Board pursuant to any requirements of State or federal statute in order to insure that all activities are consonant with the State's long-range plan for higher education.
- (5a) Notwithstanding the provisions of G.S. 135(a)(2) [135-5(a)(2)] and 126-16, the Board of Governors of the University of North Carolina may by resolution provide that, until July 1, 1982, an employee who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at a constituent institution of the University of North Carolina shall retire on July 1, coincident with or next following his sixty-fifth birthday, provided that, upon approval of the Board of Trustees of the constituent institution, an employee may be continued in service on a year-to-year basis. (1979, c. 862, s. 8; 1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Effect of Amendments. — The 1979 amendment, effective January 1, 1979, added subdivision (5a). By the terms of Session Laws 1979, c. 862, s. 10, the amendment to this section will expire on July 1, 1982.

Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" near the end of the second sentence and near the beginning of the third sentence of subdivision (1).

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" near the end of the second sentence and near the beginning of the third sentence of subdivision (1).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivisions (1) and (5a) are set out.

CASE NOTES

Open Meetings Law Inapplicable. — Since the board of governors of the University of North Carolina has no governmental powers, i.e., no powers peculiar to the sovereign, the board of governors is not, itself, a "governmental body of this State," and the former Open Meetings Law, § 143-318.2 [see now § 143-318.9 et seq.], does not extend to the

meetings of its employees, even though such employees be deemed a "component part" of the board of governors. *Student Bar Ass'n Bd. of Governors v. Byrd*, 293 N.C. 594, 239 S.E.2d 415 (1977).

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-13. Powers of Board regarding property subject to general law.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-15. Licensing of nonpublic educational institutions; regulation of degrees.

(d) The State Board of Community Colleges shall have sole authority to administer and supervise, at the State level, the system of community colleges, technical institutes, and industrial education centers provided in Chapter 115A of the General Statutes, and shall regulate the granting of appropriate awards, two-year degrees, and marks of distinction by those institutions.

(1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1.)

Editor's Note. — Chapter 115A, referred to in this section, was repealed by Session Laws 1979, c. 462. See now Chapter 115D.

Effect of Amendments. — Session Laws 1979, c. 896, s. 13, effective Jan. 1, 1981, substituted "State Board of Community Colleges and Technical Institutes" for "State Board of Education" in subsection (d).

The 1979, 2nd Sess., amendment, effective Jan. 1, 1981, substituted "State Board of Community Colleges" for "State Board of Community Colleges and Technical Institutes" in subsection (d).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendments, only subsection (d) is set out.

CASE NOTES

Board of Governors does not have authority under this section to license or regulate a Florida institution in its teaching program in this State which leads to

degrees granted in Florida. *Nova Univ. v. University of N.C.*, 47 N.C. App. 638, 267 S.E.2d 596, cert. granted, 301 N.C. 94, 273 S.E.2d 299 (1980).

§ 116-16. Tax exemption.

Legal Periodicals. — For survey of 1978 law on taxation, see 57 N.C.L. Rev. 1142 (1979).

For a note on the rejection of the "public

purpose" requirement for state tax exemption, see 17 Wake Forest L. Rev. 293 (1981).

CASE NOTES

Applied in *In re North Carolina Forestry Foundation, Inc.*, 35 N.C. App. 414, 242 S.E.2d 492 (1978); *In re North Carolina Forestry Foundation, Inc.*, 296 N.C. 330, 250 S.E.2d 236 (1979).

Cited in *In re North Carolina Forestry Foundation, Inc.*, 35 N.C. App. 430, 242 S.E.2d 502 (1978); *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-19. Contracts with private institutions to aid North Carolina students.

Legal Periodicals. — For a survey of 1977 constitutional law, see 56 N.C.L. Rev. 943 (1978).

Part 3. Constituent Institutions.

§ 116-33.1. Board of trustees to permit recruiter access.

If a board of trustees provides access to its buildings and campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board of trustees shall provide access on the same basis to official recruiting representatives of the military forces of the State and of the United States for the purpose of informing students of educational and career opportunities available in the military. (1981, c. 901, s. 3.)

Editor's Note. — Session Laws 1981, c. 901, s. 4, makes this section effective October 1, 1981.

§ 116-35. Electric power plants, campus school, etc.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-36. Endowment fund.

(i1) The Board of Governors of the University of North Carolina shall establish and maintain in a manner not inconsistent with the provisions of this section or with regulations established under this section an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television.

(j) Any gift, devise, or bequest of real or personal property to a constituent institution of the University of North Carolina or to the University of North Carolina or to the University of North Carolina Press or to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the respective institution or agency.

(1979, c. 649, ss. 2, 3.)

Effect of Amendments. — The 1979 amendment added subsection (i1) and inserted "or to the University of North Carolina Center for Public Television" in subsection (j).

Only Part of Section Set Out. — As the rest

of the section was not changed by the amendment, only subsections (i1) and (j) are set out.

Legal Periodicals. — For article, "Legal Aspects of Changing University Investment Strategies," see 58 N.C.L. Rev. 189 (1980).

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-36.1. Regulation of institutional trust funds.

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For purposes of distribution of investment earnings, all trust funds of an institution shall be deemed a single account.

(c) Moneys deposited with the State Treasurer in trust fund accounts pursuant to this section, and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to G.S. 147-58 but are not subject to the provisions of the Executive Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143-18.1.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Director of the Budget.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement State appropriations to the end that the institution may improve and increase its

functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

- (1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;
- (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States Government or any agency or instrumentality thereof;
- (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;
- (4) Moneys collected by an institution to support extracurricular activities of students of the institution;
- (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;
- (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises except student auxiliary services identified in G.S. 116-36.3;
- (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider.
- (8) The net proceeds from the disposition effected pursuant to G.S. Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as "trust funds", except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State agency.

(h) Notwithstanding the provisions of subsection (b) of this section, the Board may designate as the official depository of the funds identified in subsection (g) (7) of this section one or more banks or trust companies in this State. The amount of funds on deposit in an official depository shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of public deposits generally. The available cash balance of funds deposited pursuant to this subsection shall be invested in interest-bearing deposits and investments so that the rate of return equals that realized from the investment of State funds generally.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30; 1981, c. 529.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1136, s. 47, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

Effect of Amendments. — The 1981 amendment added subdivision (g)(8).

§ 116-36.2. Regulation of special funds of individual institutions.

(a) Notwithstanding any provisions of law other than G.S. 147-58, the chancellor of each institution is responsible for the custody and management of the special funds of that institution. The Board shall adopt uniform policies and procedures applicable to the administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for.

(b) As used in this section, "special funds of individual institutions" means:

- (1) Moneys received from or for the operation by an institution of its program of intercollegiate athletics;
- (2) Moneys held by an institution as fiscal agent for individual students, faculty, staff members, and organizations. (1977, 2nd Sess., c. 1136, s. 31.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1136, s. 47, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

§ 116-36.3. Regulation of institutional student auxiliary enterprise funds.

(a) The chancellor of each institution, subject to uniform policies and procedures adopted by the Board of Governors, is responsible for the custody and management of the institutional student auxiliary enterprise funds of that institution. The custody and management of such funds is subject to the provisions of the Executive Budget Act and to the oversight of the State Auditor pursuant to G.S. 147-58.

(b) Institutional student auxiliary enterprise funds shall be deposited with the State Treasurer who shall hold them in trust in separate accounts in the name of the University of North Carolina and of each institution. The cash balances of these accounts may be pooled for investment purposes, but investment earnings shall be credited pro rata to each participating account. For the purpose of distribution of investment earnings, all student auxiliary enterprise funds of an institution shall be deemed a single account.

(c) As used in this section, "institutional student auxiliary enterprise funds" means moneys received from or for the operation by an institution of the following self-supporting student auxiliary services: housing; food; health and laundry. (1977, 2nd Sess., c. 1136, s. 32.)

Editor's Note. — Session Laws 1977, 2nd Sess., c. 1136, s. 47, makes the act effective July 1, 1978.

Session Laws 1977, 2nd Sess., c. 1136, s. 45, contains a severability clause.

§ 116-37. North Carolina Memorial Hospital board of directors; administration of hospital.

(a) Composition. — The Board of Governors of the University of North Carolina is hereby directed to create a board of directors for the North Carolina Memorial Hospital consisting of 12 members of which nine shall be appointed by the consolidated University Governors. Three members ex officio of said board shall be the University of North Carolina Vice-Chancellor for Health Sciences, University of North Carolina Vice-Chancellor for Business and Finance, and the Dean of the University of North Carolina Medical School, or

successors to these offices under other titles with similar responsibilities. Nine members shall be appointed from the business and professional public-at-large, none of whom shall be Governors of the University, and, thereafter, the nine appointive members shall select one of their number to serve as chairman. Members of this board shall include, but not be limited to, persons with special competence in business management, hospital administration, and medical practice not affiliated with University faculty. Four members shall be appointed for three-year terms and five members for five-year terms. All subsequent appointments shall be for five-year terms. Board member vacancies shall be filled by the Governors for the unexpired term. The Governors may remove any member for cause. Board members, other than ex officio members, shall each receive such per diem and necessary travel and subsistence expenses while engaged in the discharge of their official duties as is provided by law for members of State boards and commissions generally.

(b) Meetings and Powers of Board. — The board of directors shall meet at least every 60 days and may hold special meetings at any time and place within the State at the call of its chairman. The board of directors shall make rules, regulations, and policies governing the management and operation of the North Carolina Memorial Hospital, consistent with basic State statutes and procedures, to meet the goals of education, research, patient care, and community service. The board's action on matters within its jurisdiction are [is] final, except that appeals may be made, in writing, to the Board of Governors with copy of appeal to the University administration. The board of directors shall elect and may remove the director of the hospital. The board of directors may enter into formal agreements with the University of North Carolina at Chapel Hill, Division of Health Sciences, with respect to the provision of clinical experience for students and may also enter into formal agreements with the University of North Carolina at Chapel Hill for the provision of maintenance and supporting services needed by the hospital.

(c) Director of Hospital. — The executive head of the North Carolina Memorial Hospital shall be the director of the hospital, who shall be appointed by the board of directors to serve at its pleasure. The director shall administer the affairs of the hospital subject to the duly adopted policies, rules, and regulations of the board of directors, including the appointment, promotion, demotion, and discharge of all hospital personnel. The director of the hospital shall report to the board of directors quarterly or more often as required. The director will serve as secretary to the board of directors.

(d) Hospital Personnel. — The hospital shall establish a personnel office for personnel administration independent of the central personnel office of the University of North Carolina at Chapel Hill.

(e) Hospital Finances. — The hospital shall be subject to the provision of the Executive Budget Act. There shall be established a hospital business and budget office to administer the budget and financial affairs of the hospital, independent of the central business and financial office of the University of North Carolina at Chapel Hill, except for cooperative reporting requirements. The director of the hospital, subject to the board of directors, shall be responsible for all aspects of budget preparation, budget execution, and expenditure reporting. Subject to the approval of the Advisory Budget Commission: All hospital operating funds may be budgeted and disbursed through a special fund code, all hospital receipts may be deposited directly to the special fund code; and general fund appropriations for hospital support may be budgeted in a general fund code under a single purpose, "Contribution to Hospital Operations" and be transferable to the special fund operating code as receipts.

(f) Hospital Purchases. — The hospital shall be subject to all provisions of Articles 3 and 3A of Chapter 143 of the General Statutes relating to the Department of Administration, Purchase and Contract Division. There shall be established a hospital purchasing office independent of the central purchasing

office of the University of North Carolina at Chapel Hill to handle all purchasing requirements of the hospital. The Purchase and Contract Division may enter into such arrangements with the hospital board of directors as the Division may deem necessary in consideration of the special requirements of the hospital for procurement of certain supplies, materials, equipments and services.

(g) Hospital Property. — The hospital board of directors shall be responsible to the University Board of Governors for the maintenance, operation, and control of the hospital and its grounds.

(h) Patient Information. — North Carolina Memorial Hospital shall, at the earliest possible opportunity, specifically make a verbal and written request to each patient to disclose his Social Security number, if any. If the patient does not disclose that number, North Carolina Memorial Hospital shall deny benefits, rights and privileges of the hospital to the patient as soon as practical, to the maximum extent permitted by federal law or federal regulations. North Carolina Memorial Hospital shall make the disclosure to the patient required by Section 7(b) of P.L. 93-579. This subsection is supplementary to G.S. 105A-3(c). (1971, c. 762, s. 1; c. 1244, s. 6; 1981, c. 859, s. 41.5.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added subsection (h). Session Laws 1981, c. 859, s. 97, contains a severability clause.

§ 116-37.1. Center for public television.

(a) The Board of Governors is hereby authorized and directed to establish "the University of North Carolina Center for Public Television" (hereinafter called "the Center"). It shall be the functions of the Center, through itself or agencies with whom it may contract, to provide research, development, and production of noncommercial educational television programming and program materials; to provide distribution of noncommercial television programming through the broadcast facilities licensed to the University of North Carolina; and otherwise to enhance the uses of television for public purposes.

(b) The Center shall have a board of trustees, to be named "the Board of Trustees of the University of North Carolina Center for Public Television" (hereinafter called "the Board of Trustees"). The Board of Governors is hereby authorized and directed to establish the Board of Trustees of the Center and to delegate to the Board of Trustees such powers and duties as the Board of Governors deems necessary or appropriate for the effective discharge of the functions of the Center; provided, that the Board of Governors shall not be deemed by the provisions of this section to have the authority to delegate any responsibility it may have as licensee of the broadcast facilities of the University of North Carolina.

- (1) The Board of Trustees of the University of North Carolina Center for Public Television shall be composed of the following membership: eleven persons appointed by the Board of Governors; four persons appointed by the Governor; one Senator appointed by the President of the Senate; one member of the House of Representatives appointed by the Speaker of the House; and ex officio, the Secretary of the Department of Cultural Resources, the Secretary of the Department of Human Resources, the Superintendent of Public Instruction, the State President of the Community College System, and the President of the University of North Carolina. In making initial appointments to the Board of Trustees, the Board of Governors shall designate six persons for two-year terms and five persons for four-year terms, and the Governor shall designate two persons for two-year terms and two

persons for four-year terms. Thereafter, the term of office of appointed members of the Board of Trustees of the Center shall be four years. In making appointments to the Board of Trustees the appointing authorities shall give consideration to promoting diversity among the membership, to the end that, in meeting the responsibilities delegated to it, the Board of Trustees will reflect and be responsive to the diverse needs, interests, and concerns of the citizens of North Carolina.

- (2) No person shall be appointed to the Board of Trustees who is an employee of the State or of any constituent institution; a public officer of the State as defined in G.S. 147-1, 147-2, and 147-3(c); a member of the Board of Governors; a trustee of a constituent institution; or the spouse of any of the foregoing. Any appointed member of the Board of Trustees who after appointment becomes any of the foregoing shall be deemed to have resigned from the Board of Trustees.
- (3) Each ex officio member of the Board of Trustees shall personally serve on the Board of Trustees but may designate in writing a proxy for specified meetings which the ex officio member finds he or she is unable reasonably to attend.
- (4) Each appointive member of the Board of Trustees shall personally serve on the Board of Trustees without benefit of proxy. Any appointive member who fails, for any reason other than ill health or service in the the interest of the State or the nation, to attend three consecutive regular meetings of the Board of Trustees, shall be deemed to have resigned from the Board of Trustees.
- (5) Any vacancy which occurs during a term among the appointive membership of the Board of Trustees shall be filled for the remainder of the unexpired term by appointment of the original appointing authority for the vacant seat. The principal officer of the Board of Trustees shall promptly notify the Secretary of the University of North Carolina of the vacancy and the Secretary shall give written notice of the vacancy to the appropriate appointing authority.

(c) The chief administrative officer of the Center shall be a Director, who shall be elected by the Board of Governors upon recommendation of the President and who shall be responsible to the President. The Center shall have such other staff as the Board of Governors may authorize. (1979, c. 649, s. 1.)

Editor's Note. — Former § 116-37.1 was transferred to § 116-40.2 by Session Laws 1971, c. 1244, s. 10.

Part 4. Revenue Bonds for Service and Auxiliary Facilities.

§ 116-41.1. Definitions.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-41.4. Bonds authorized; amount limited; form, execution and sale; terms and conditions; use of proceeds; additional bonds; interim receipts or temporary bonds, replacement of lost, etc., bonds; approval or consent for issuance; bonds not debt of State; bond anticipation notes.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

Part 6. Traffic and Parking.

§ 116-44.5. Special provisions applicable to identified constituent institutions of the University of North Carolina.

In addition to the powers granted by G.S. 116-42.1, the board of trustees of each of the constituent institutions enumerated hereinafter shall have the additional powers prescribed:

(3a) The Board of Trustees of the University of North Carolina at Wilmington may by ordinance prohibit, regulate, and limit the parking of motor vehicles on those portions of the following public streets in the City of Wilmington where parking is not prohibited by an ordinance of the City of Wilmington:

a. "H" Street.

(1979, c. 238.)

Editor's Note. — Section 116-42.1, referred to in this section, was repealed by Session Laws 1973, c. 495, s. 2.

Effect of Amendments. — The 1979 amendment added subdivision (3a).

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory language and subdivision (3a) are set out.

ARTICLE 4.

North Carolina School of the Arts.

§ 116-65. To be part of University of North Carolina; membership of Board of Trustees.

The North Carolina School of Arts is a part of the University of North Carolina and subject to the provisions of Article 1, Chapter 116, of the General Statutes; provided, however, that notwithstanding the provisions of G.S. 116-31, the Board of Trustees of said school shall consist of 15 persons, 13 of whom are selected in accordance with provisions of G.S. 116-31, and the conductor of the North Carolina Symphony and the Secretary of the Department of Cultural Resources, both serving ex officio and nonvoting. (1963, c. 1116; 1971, c. 320, s. 4; c. 1244, s. 13; 1979, c. 562.)

Effect of Amendments. — The 1979 amendment, effective May 1, 1979, substituted "15" for "14" near the middle of the section, deleted "one of whom shall be" before "the conductor"

near the end of the section, and inserted "and the Secretary of the Department of Cultural Resources, both serving" near the end of the section.

ARTICLE 14.

General Provisions as to Tuition and Fees in Certain State Institutions.

§ 116-143. State-supported institutions of higher education required to charge tuition and fees.

The Board of Governors of the University of North Carolina shall fix the tuition and fees, not inconsistent with actions of the General Assembly, at the institutions enumerated in G.S. 116-4 in such amount or amounts as it may deem best, taking into consideration the nature of each institution and program of study and the cost of equipment and maintenance; and each institution shall charge and collect from each student, at the beginning of each semester or quarter, tuition, fees, and an amount sufficient to pay other expenses for the term.

In the event that said students are unable to pay the cost of tuition and required academic fees as the same may become due, in cash, the said several boards of trustees are hereby authorized and empowered, in their discretion, to accept the obligation of the student or students together with such collateral or security as they may deem necessary and proper, it being the purpose of this Article that all students in State institutions of higher learning shall be required to pay tuition, and that free tuition is hereby abolished.

Inasmuch as the giving of tuition and fee waivers, or especially reduced rates, represent in effect a variety of scholarship awards, the said practice is hereby prohibited except when expressly authorized by statute or by the Board of Governors of the University of North Carolina; and, furthermore, it is hereby directed and required that all budgeted funds expended for scholarships of any type must be clearly identified in budget reports.

Notwithstanding the above provision relating to the abolition of free tuition, the Board of Governors of the University of North Carolina may, in its discretion, provide regulations under which a full-time faculty member of the rank of full-time instructor or above, and any full-time staff member of the University of North Carolina may during the period of normal employment enroll for not more than one course per semester in the University of North Carolina free of charge for tuition, provided such enrollment does not interfere with normal employment obligations and further provided that such enrollments are not counted for the purpose of receiving general fund appropriations. (1933, c. 320, s. 1; 1939, cc. 178, 253; 1949, c. 586; 1961, c. 833, s. 16.1; 1963, c. 448, s. 27.1; 1965, c. 903; 1971, c. 845, ss. 6, 10; c. 1086, s. 2; c. 1244, s. 12; 1973, c. 116, s. 1; 1977, c. 605; 1981, c. 859, s. 41.4.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, inserted "or by the Board of Governors of The University of North Carolina" near the middle of the third paragraph, and deleted the former fourth paragraph, which related to special tuition rates for individuals participating in an interstate regional training program, or the Appalachian Regional Commission program, or the Coastal

Plains Regional Commission program, or any other limiting federally funded program, or individuals solicited for a special talent.

Session Laws 1981, c. 859, s. 97, contains a severability clause.

Legal Periodicals. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

§ 116-143.1. Provisions for determining resident status for tuition purposes.

(a) As defined under this section:

- (1) A "legal resident" or "resident" is a person who qualifies as a domiciliary of North Carolina; a "nonresident" is a person who does not qualify as a domiciliary of North Carolina.
- (2) A "resident for tuition purposes" is a person who qualifies for the in-State tuition rate; a "nonresident for tuition purposes" is a person who does not qualify for the in-State tuition rate.
- (3) "Institution of higher education" means any of the constituent institutions of the University of North Carolina and the community colleges and technical institutes under the jurisdiction of the North Carolina State Board of Education.

(b) To qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least 12 months immediately prior to his or her classification as a resident for tuition purposes. Every applicant for admission shall be required to make a statement as to his length of residence in the State.

(c) To be eligible for classification as a resident for tuition purposes, a person must establish that his or her presence in the State currently is, and during the requisite 12-month qualifying period was, for purposes of maintaining a bona fide domicile rather than of maintaining a mere temporary residence or abode incident to enrollment in an institution of higher education.

(d) An individual shall not be classified as a resident for tuition purposes and, thus, not rendered eligible to receive the in-State tuition rate, until he or she has provided such evidence related to legal residence and its duration as may be required by officials of the institution of higher education from which the individual seeks the in-State tuition rate.

(e) When an individual presents evidence that the individual has living parent(s) or court-appointed guardian of the person, the legal residence of such parent(s) or guardian shall be prima facie evidence of the individual's legal residence, which may be reinforced or rebutted relative to the age and general circumstances of the individual by the other evidence of legal residence required of or presented by the individual; provided, that the legal residence of an individual whose parents are domiciled outside this State shall not be prima facie evidence of the individual's legal residence if the individual has lived in this State the five consecutive years prior to enrolling or reregistering at the institution of higher education at which resident status for tuition purposes is sought.

(f) In making domiciliary determinations related to the classification of persons as residents or nonresidents for tuition purposes, the domicile of a married person, irrespective of sex, shall be determined, as in the case of an unmarried person, by reference to all relevant evidence of domiciliary intent. For purposes of this section:

- (1) No person shall be precluded solely by reason of marriage to a person domiciled outside North Carolina from establishing or maintaining legal residence in North Carolina and subsequently qualifying or continuing to qualify as a resident for tuition purposes;
- (2) No persons shall be deemed solely by reason of marriage to a person domiciled in North Carolina to have established or maintained a legal residence in North Carolina and subsequently to have qualified or continued to qualify as a resident for tuition purposes;
- (3) In determining the domicile of a married person, irrespective of sex, the fact of marriage and the place of domicile of his or her spouse shall be deemed relevant evidence to be considered in ascertaining domiciliary intent.

(g) Any nonresident person, irrespective of sex, who marries a legal resident of this State or marries one who later becomes a legal resident, may, upon becoming a legal resident of this State, accede to the benefit of the spouse's immediately precedent duration as a legal resident for purposes of satisfying the 12-month durational requirement of this section.

(h) No person shall lose his or her resident status for tuition purposes solely by reason of serving in the armed forces outside this State.

(i) A person who, having acquired bona fide legal residence in North Carolina, has been classified as a resident for tuition purposes but who, while enrolled in a State institution of higher education, loses North Carolina legal residence, shall continue to enjoy the in-State tuition rate for a statutory grace period. This grace period shall be measured from the date on which the culminating circumstances arose that caused loss of legal residence and shall continue for 12 months; provided, that a resident's marriage to a person domiciled outside of North Carolina shall not be deemed a culminating circumstance even when said resident's spouse continues to be domiciled outside of North Carolina; and provided, further, that if the 12-month period ends during a semester or academic term in which such a former resident is enrolled at a State institution of higher education, such grace period shall extend, in addition, to the end of that semester or academic term.

(j) Notwithstanding the prima facie evidence of legal residence of an individual derived pursuant to subsection (e), notwithstanding the presumptions of the legal residence of a minor established by common law, and notwithstanding the authority of a judicially determined custody award of a minor, for purposes of this section, the legal residence of a minor whose parents are divorced, separated, or otherwise living apart shall be deemed to be North Carolina for the time period relative to which either parent is entitled to claim and does in fact claim the minor as a dependent pursuant to the North Carolina individual income tax provisions of G.S. 105-149(a)(5). The provisions of this subsection shall pertain only to a minor who is claimed as a dependent by a North Carolina legal resident.

Any person who immediately prior to his or her eighteenth birthday would have been deemed under this subsection a North Carolina legal resident but who achieves majority before enrolling at an institution of higher education shall not lose the benefit of this subsection if that person:

- (1) Upon achieving majority, acts, to the extent that the person's degree of actual emancipation permits, in a manner consistent with bona fide legal residence in North Carolina; and
- (2) Begins enrollment at an institution of higher education not later than the fall academic term next following completion of education prerequisite to admission at such institution.

(k) Notwithstanding other provisions of this section, a minor who satisfies the following conditions immediately prior to commencement of an enrolled term at an institution of higher education, shall be accorded resident tuition status for that term:

- (1) The minor has lived for five or more consecutive years continuing to such term in North Carolina in the home of an adult relative other than a parent, domiciled in this State; and
- (2) The adult relative has functioned during those years as a de facto guardian of the minor and exercised day-to-day care, supervision, and control of the minor.

A person who immediately prior to his or her eighteenth birthday qualified for or was accorded resident status for tuition purposes pursuant to this subsection shall be deemed upon achieving majority to be a legal resident of North Carolina of at least 12 months' duration; provided, that the legal residence of such an adult person shall be deemed to continue in North Carolina only so long as the person does not abandon legal residence in this State.

(I) Any person who ceases to be enrolled at or graduates from an institution of higher education while classified as a resident for tuition purposes and subsequently abandons North Carolina domicile shall be permitted to reenroll at an institution of higher education as a resident for tuition purposes without necessity of meeting the 12-month durational requirement of this section if the person reestablishes North Carolina domicile within 12 months of abandonment of North Carolina domicile and continuously maintains the reestablished North Carolina domicile at least through the beginning of the academic term(s) for which in-State tuition status is sought. The benefit of this subsection shall be accorded not more than once to any one person. (1971, c. 845, ss. 7-9; 1973, cc. 710, 1364, 1377; 1975, c. 436; 1979, cc. 435, 836; 1981, cc. 471, 905.)

Effect of Amendments. — The first 1979 amendment added subsection (j).

The second 1979 amendment added subsection (k).

The first 1981 amendment added the second paragraph in subsection (j).

The second 1981 amendment added subsection (I).

Only Part of Section Set Out. — As the other subsections were not changed by the amendments, they are not set out.

Legal Periodicals. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

§ 116-144. Higher fees from nonresidents may be charged.

Legal Periodicals. — For survey of 1972 case law on establishing residence for tuition purposes, see 51 N.C.L. Rev. 1012 (1973).

ARTICLE 18A.

Contracts of Minors Borrowing for Higher Education; Scholarship Revocation.

§ 116-174.1. Minors authorized to borrow for higher education; interest; requirements of loans.

Legal Periodicals. — For article, "The Perspective of Fair Exchange," see 50 N.C.L. Rev. 517 (1972).

ARTICLE 19.

Revenue Bonds for Student Housing.

§ 116-175. Definitions.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-176. Issuance of bonds.**CASE NOTES**

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

ARTICLE 21.***Revenue Bonds for Student Housing, Student Activities, Physical Education and Recreation.*****§ 116-187. Purpose of Article.**

The purpose of this Article is to authorize the Board of Governors of the University of North Carolina to issue revenue bonds, payable from rentals, charges, fees (including student fees) and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or in part, of buildings and other facilities for the housing, health, welfare, recreation and convenience of students enrolled at the institutions hereinafter designated, housing of faculty, adult or continuing education programs and for revenue-producing parking decks or structures, and for North Carolina Memorial Hospital. (1963, c. 847, s. 1; 1967, c. 1148, s. 1; 1971, c. 1061, s. 1; c. 1244, s. 16; 1979, c. 731, s. 6.)

Effect of Amendments. — The 1979 amendment, effective July 1, 1979, added "and for North Carolina Memorial Hospital" at the end of the section.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-188. Credit and taxing power of State not pledged; statement on face of bonds.**CASE NOTES**

Cited in *Roberson v. Dale*, 464 F. Supp. 680 (M.D.N.C. 1979).

§ 116-189. Definitions.

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

- (4) The word "institution" shall mean each of the institutions enumerated in G.S. 116-2 and North Carolina Memorial Hospital.
- (5) The word "project" shall mean and shall include any one or more buildings or facilities for (i) the housing, health, welfare, recreation and convenience of students, (ii) the housing of faculty, (iii) adult or

continuing education, (iv) revenue-producing parking decks or structures, and (v) education, research, patient care and community services at North Carolina Memorial Hospital, of any size or type approved by the Board and the Advisory Budget Commission and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student, faculty and adult or continuing education housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, infirmaries and other health care buildings, structures and facilities, academic facilities for adult or continuing education, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or adult or continuing education or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.

(1979, c. 731, s. 6.)

Effect of Amendments. — The 1979 amendment added "and North Carolina Memorial Hospital" at the end of subdivision (4), deleted "and" before "(iv)" near the beginning of the first sentence in subdivision (5) and inserted ", and (v) education, research, patient care and community services at North Carolina Memo-

rial Hospital," near the beginning of that sentence.

Only Part of Section Set Out. — As the rest of the section was not changed by the amendment, only the introductory paragraph and subdivisions (4) and (5) are set out.

§§ 116-198.1 to 116-198.5: Reserved for future codification purposes.

ARTICLE 21A.

Higher Educational Facilities Finance Act.

(Effective on Certification of Adoption of Constitutional Amendment.)

§ 116-198.6. Short title.

This Article shall be known, and may be cited, as the "Higher Educational Facilities Finance Act." (1981, c. 784, s. 1.)

Editor's Note. — Session Laws 1981, c. 784, s. 27 provides: "This act shall become effective upon certification by the State Board of Elections that an amendment to the North Carolina Constitution authorizing the enactment of general laws dealing with transactions of the type contemplated by this act has been approved by

the people of the State." The constitutional amendment referred to in Section 27 was proposed by Session Laws 1981, c. 887, which would add a new § 11 to Art. V of the Constitution. It will be voted on in May, 1982.

Session Laws 1981, c. 784, s. 26, contains a severability clause.

Effective on Certification of Adoption of Constitutional Amendment**§ 116-198.7. Legislative findings.**

It is hereby declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions of higher education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this Article to provide a measure of assistance and an alternative method to enable private institutions of higher education in the State to provide the facilities and the structures which are needed to accomplish the purposes of this Article, all to the public benefit and good, to the extent and in the manner provided herein. (1981, c. 784, s. 2.)

§ 116-198.8. Definitions.

As used or referred to in this Article, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- (1) "Agency" means the North Carolina Educational Facilities Finance Agency created by this Article, or, should said agency be abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this Article to the agency.
- (2) "Bonds" or "notes" means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Article, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution for higher education or any other lawfully pledged security of a participating institution for higher education.
- (3) "Cost", as applied to any project or any portion thereof financed under the provisions of this Article, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution for higher education for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred earlier than five years prior to the effective date of this Article.

Effective on Certification of Adoption of Constitutional Amendment

- (4) "Institution for higher education" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.
- (5) "Participating institution for higher education" means an institution for higher education which, pursuant to the provisions of this Article, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this Article.
- (6) "Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food service facilities, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution for higher education, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.
- (7) "State" means the State of North Carolina. (1981, c. 784, s. 3.)

§ 116-198.9. Educational Facilities Finance Agency.

(a) There is hereby created a body politic and corporate to be known as "North Carolina Educational Facilities Finance Agency" which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The Agency shall be governed by a board of directors composed of seven members. Two of the members of said board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the Agency shall be residents of the State and shall not hold other public office. The President of the Senate shall appoint one director, the Speaker of the House shall appoint one director, and the Governor shall appoint three of the directors of the Agency. The five appointive directors of the Agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor, and each director shall continue in office until his successor shall be duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made such appointment. Any member of the board of directors shall be eligible

Effective on Certification of Adoption of Constitutional Amendment

for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the same are in writing expressly waived. Each appointive member of the board of directors before entering upon his duties shall take an oath of office to administer the duties of his office faithfully and impartially and a record of such oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a chairman and a vice-chairman. The terms of the chairman and vice-chairman shall extend to the earlier of either two years or the date of expiration of their then current terms as members of the board of directors of the Agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and such other officers as it shall deem necessary or advisable, which officers need not be members of the board of directors.

(b) No part of the revenues or assets of the Agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the Agency or any committee thereof and for other services for the Agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the Agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the Agency, the minute book or journal of the Agency and its official seal. He shall have authority to cause copies to be made of all minutes and other records and documents of the Agency and to give certificates under the official seal of the Agency to the effect that such copies are true copies, and all persons dealing with the Agency may rely upon such certificates.

(d) Four members of the board of directors of the Agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board of directors duly called and held shall be necessary for any action taken by the board of directors of the Agency; provided, however, that the board of directors may appoint an executive committee to act on behalf of said board during the period between regular meetings of said board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the Agency shall impair the rights of a quorum to exercise all the rights and to perform all the duties of the Agency.

(e) The North Carolina Educational Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b). (1981, c. 784, s. 4.)

§ 116-198.10. General powers.

The Agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Article, including, but without limiting the generality of the foregoing, the power:

- (1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this Article, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating institutions of higher education, persons, firms, corporations, governmental agencies and others;
- (2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or

Effective on Certification of Adoption of Constitutional Amendment

unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the authority;

- (3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any project;
- (4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;
- (5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received therefrom whether such securities are initially acquired by the Agency or a participating institution for higher education, and any proceeds derived by the Agency from sales of property, insurance, condemnation awards or other sources;
- (6) To pledge or assign the revenues and receipts from any project and any loan agreement, agreement of sale or lease or the loan repayments, purchase price payments, rent and income received thereunder;
- (7) To borrow money as herein provided to carry out and effectuate its corporate purposes and to issue in evidence thereof bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution for higher education for the acquisition of any federally guaranteed securities and to issue revenue refunding bonds;
- (8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the Agency for such purpose;
- (9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any project;
- (10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and such other consultants and employees as may be required in the judgment of the Agency and to fix and pay their compensation from funds available to the Agency therefor;
- (11) To conduct studies and surveys respecting the need for projects and their location, financing and construction;
- (12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or instrumentalities;
- (13) To sue and be sued in its own name, plead and be impleaded;
- (14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use any such federally guaranteed security or federally insured mortgage note in such manner as the Agency deems in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution for higher education to finance or refinance the cost of any project;
- (15) To make loans to any participating institution for higher education for the cost of a project in accordance with an agreement between the Agency and the participating institution for higher education;

Effective on Certification of Adoption of Constitutional Amendment

- (16) To make loans to a participating institution for higher education to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by such participating institutions for higher education for the cost of a project;
- (17) To charge and to apportion among participating institutions for higher education its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this Article;
- (18) To adopt an official seal and alter the same at pleasure; and
- (19) To do all other things necessary or convenient to carry out the purposes of this Article. (1981, c. 784, s. 5.)

§ 116-198.11. Criteria and requirements.

In undertaking any project pursuant to this Article, the Agency shall be guided by and shall observe the following criteria and requirements; provided that the determination of the Agency as to its compliance with such criteria and requirements shall be final and conclusive:

- (1) No project shall be sold or leased nor any loan made to any institution for higher education which is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge such other responsibilities as may be imposed under the agreement of sale or lease or loan agreement;
- (2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves therefor and for the operation, repair and maintenance of the project at the expense of the participating institution for higher education; and
- (3) The public facilities, including utilities, and public services necessary for the project will be made available. (1981, c. 784, s. 6.)

§ 116-198.12. Procedural requirements.

Any institution for higher education may submit to the Agency, and the Agency may consider, a proposal for financing a project using such forms and following such instructions as may be prescribed by the Agency. Such proposal shall set forth the type and location of the project and may include other information and data available to the institution for higher education respecting the project and the extent to which such project conforms to the criteria and requirements set forth in this Article. The Agency may request the institution for higher education to provide additional information and data respecting the project. The Agency is authorized to make or cause to be made such investigations, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the institution for higher education, the extent to which the project otherwise conforms to the criteria and requirements of this Article, and such other factors as may be deemed relevant or convenient in carrying out the purposes of this Article. (1981, c. 784, s. 7.)

Effective on Certification of Adoption of Constitutional Amendment**§ 116-198.13. Discrimination prohibited; provisions of loan agreement or agreement of sale or lease.**

All projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, color or national origin.

The Agency may sell or lease any project to a participating institution for higher education for operation and maintenance or lend money to any participating institution for higher education in such manner as shall effectuate the purposes of this Chapter, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent herewith. Any such loan agreement or agreement of sale or lease may include provisions that:

- (1) The participating institution for higher education shall, at its own expense, operate, repair and maintain the project covered by such agreement;
- (2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the Agency to pay the cost of the project sold or leased thereunder or with respect to which the loan was made;
- (3) The participating institution for higher education shall pay all other costs incurred by the agency in connection with the providing of the project covered by any such agreement, except such costs as may be paid out of the proceeds of bonds or notes or otherwise, including, but without limitation, insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes and the fees and expenses of trustees, paying agents, attorneys, consultants and others;
- (4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all such bonds and all other obligations incurred by the Agency in connection with the project covered by any such agreement shall be retired or provision for such retirement shall be made; and
- (5) The obligation of the participating institution for higher education to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution for higher education until the bonds have been retired or provision has been made for such retirement.

Where the Agency has acquired a possessory or ownership interest in any project which it has undertaken on behalf of a participating institution for higher education it shall promptly convey, without the payment of any consideration, all its right, title and interest in such project to such participating institution for higher education upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Agency in connection with such project. (1981, c. 784, s. 8.)

§ 116-198.14. Construction contracts.

If the Agency shall determine that the purposes of this Article will be more effectively served, the Agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution for higher education upon a negotiated basis as determined by the Agency. The Agency shall prescribe such bid security requirements and other procedures in connection with the award of such contracts as in its judgment shall protect the public interest. The Agency may by written

Effective on Certification of Adoption of Constitutional Amendment

contract engage the services of the participating institution for higher education in the construction of such project and may provide in any such contract that such participating institution for higher education, subject to such conditions and requirements consistent with the provisions of this Article as shall be prescribed in such contract, may act as an agent of, or an independent contractor for, the Agency for the performance of the functions described therein, including the acquisition of the site and other real property for such project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of such project directly by such participating institution for higher education, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost thereof pending reimbursement by the agency. Any such contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution for higher education for its costs incurred in the performance of such functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that shall be required in connection therewith to assure compliance with the provisions of this Article and such contract. (1981, c. 784, s. 9.)

§ 116-198.15. Credit of State not pledged.

Bonds or notes issued under the provisions of this Article shall not be secured by a pledge of the faith and credit of the State or of any political subdivision thereof or be deemed to create an indebtedness of the State, or of any such political subdivision thereof, requiring any voter approval, but shall be payable solely from the revenues and other funds provided therefor. Each bond or note issued under this Article shall contain on the face thereof a statement to the effect that the Agency shall not be obligated to pay the same nor the interest thereon except from the revenues and other funds pledged therefor and that neither the faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged as security for the payment of the principal of or the interest on such bond or note.

Expenses incurred by the Agency in carrying out the provisions of this Article may be made payable from funds provided pursuant to, or made available for use under, this Article and no liability shall be incurred by the Agency hereunder beyond the extent to which moneys shall have been so provided. (1981, c. 784, s. 10.)

§ 116-198.16. Bonds and notes.

(a) The Agency is hereby authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the Agency to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this Article for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the Agency at such price or prices and upon such terms and conditions as may be determined by the Agency. Any such bonds or notes shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the Agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as

Effective on Certification of Adoption of Constitutional Amendment

may be determined by the Agency. The Agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or notes or coupons attached thereto shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the Agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the Agency under this Article unless the issuance thereof is approved by the Local Government Commission of North Carolina.

(b) The Agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of such bonds or notes which shall contain such information and have attached to it such documents concerning the proposed financing and prospective borrower, vendee or lessee as the Secretary may require.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements mentioned in this Article, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of such bonds or notes if, upon the information and evidence it receives, it finds and determines that the proposed financing will effectuate the purposes of this Article.

Upon the filing with the Local Government Commission of a resolution of the Agency requesting that its bonds or notes be sold, such bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission shall determine to be for the best interests of the Agency and effectuate best the purposes of this Article, provided that such sale shall be approved by the Agency.

(c) The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the Agency may provide in the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes.

(d) Prior to the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds, when such bonds shall have been executed and are available for delivery. The Agency may also provide for the replacement of any bonds or notes which shall become mutilated or shall be destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau or Agency of the State, and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things which are specifically required by this Article and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, such bonds or notes. (1981, c. 784, s. 11.)

Effective on Certification of Adoption of Constitutional Amendment**§ 116-198.17. Trust agreement or resolution.**

In the discretion of the Agency any bonds or notes issued under the provisions of this Article may be secured by a trust agreement by and between the Agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the Agency received pursuant to this Article, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project and may grant a deed of trust or a mortgage on any project. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Agency in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the Agency, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties of the Agency with respect to the acquisition, construction, maintenance, repair and operation of any project, the fees, loan repayments, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this Article and of such trust agreement or resolution; except that the Agency may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depository of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the Agency. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any deed of trust or mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Agency may deem reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any project or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the agency. (1981, c. 784, s. 12.)

§ 116-198.18. Revenues; pledges of revenues.

(a) The Agency is hereby authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section thereof, and to contract with any participating institution for higher education for the use thereof. The Agency may require that the participating institution for higher education shall operate, repair or maintain such project and shall bear the cost thereof and other costs of the Agency in connection therewith, all as may be provided in the agreement of sale or lease, loan agreement or other contract with the Agency, in addition to other obligations imposed under such agreement or contract.

Effective on Certification of Adoption of Constitutional Amendment

(b) The fees, loan repayments, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with such other funds as may be made available therefor, (i) to pay the costs of operating, repairing and maintaining the project to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as the same shall become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, such bonds; and such fees, loan repayments, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the project.

(c) All pledges of fees, loan repayments, purchase price payments, rents, charges and other revenues under the provisions of this Article shall be valid and binding from the time when such pledges are made. All such revenues so pledged and thereafter received by the Agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Agency, irrespective of whether such parties have notice thereof. The resolution or any trust agreement by which a pledge is created or any loan agreement, agreement of sale or lease need not be filed or recorded except in the records of the Agency.

(d) The State of North Carolina does pledge to and agree with the holders of any bonds or notes issued by the Agency that so long as any of such bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the Agency at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, purchase price payments, rents, fees and charges for the use of or services rendered by any project in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with such other funds as may be made available therefor, to pay the costs of operating, repairing and maintaining the project, to pay the principal of and the interest on all bonds and notes as the same shall become due and payable and to create and maintain any reserves provided therefor and to fulfill the terms of any agreements made with the bondholders or noteholders, nor will the State in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged. (1981, c. 784, s. 13.)

§ 116-198.19. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this Article, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project, shall be deemed to be trust funds to be held and applied solely as provided in this Article. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes of this Article, subject to such limitations as this Article and such resolution or trust agreement may provide. Any such moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended. (1981, c. 784, s. 14.)

Effective on Certification of Adoption of Constitutional Amendment**§ 116-198.20. Remedies.**

Any holder of bonds or notes issued under the provisions of this Article or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the Agency pursuant to this Article, and may enforce and compel the performance of all duties required by this Article or by such trust agreement or resolution to be performed by the Agency or by any officer thereof. (1981, c. 784, s. 15.)

§ 116-198.21. Investment securities.

All bonds, notes and interest coupons appertaining thereto issued under this Article are hereby made investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under said Article 8, subject only to the provisions of the bonds and notes pertaining to registration. (1981, c. 784, s. 16.)

§ 116-198.22. Bonds or notes eligible for investment.

Bonds or notes issued under the provisions of this Article are hereby made securities in which all public officers and public bodies of the State and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds or notes are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of this State is now or may hereafter be authorized by law. (1981, c. 784, s. 17.)

§ 116-198.23. Refunding bonds or notes.

The Agency is hereby authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which shall have been issued under the provisions of this Article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds or notes and, if deemed advisable by the Agency, for any corporate purpose of the Agency, including, without limitation:

- (1) Constructing improvements, additions, extensions or enlargements of the project in connection with which the bonds or notes to be refunded shall have been issued, and
- (2) Paying all or any part of the cost of any additional project.

The issuance of such bonds or notes, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Agency in respect of the same shall be governed by the provisions of this Article which relate to the issuance of bonds or notes, insofar as such provisions may be appropriate therefor.

Refunding bonds or notes may be sold or exchanged for outstanding bonds or notes issued under this Article and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or

Effective on Certification of Adoption of Constitutional Amendment

payment of such refunding bonds or notes, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of any interest on such refunding bonds or notes and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accrued thereon, will be required for the purposes intended. (1981, c. 784, s. 18.)

§ 116-198.24. Annual report.

The Agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this Article for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The Agency shall cause an audit of its books and accounts relating to its activities under this Article to be made at least once in each year by an independent certified public accountant and the cost thereof may be paid from any available moneys of the Agency. (1981, c. 784, s. 19.)

§ 116-198.25. Officers not liable.

No member or officer of the Agency shall be subject to any personal liability or accountability by reason of his execution of any bonds or notes or the issuance thereof. (1981, c. 784, s. 20.)

§ 116-198.26. Tax exemption.

The exercise of the powers granted by this Article will be in all respects for the benefit of the people of the State and will promote their health and welfare, and no tax or assessment shall be levied upon any project undertaken by the Agency prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Agency in connection with such project.

Any bonds or notes issued by the Agency under the provisions of this Article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes. (1981, c. 784, s. 21.)

§ 116-198.27. Conflict of interest.

If any member, officer or employee of the Agency shall be interested either directly or indirectly, or shall be an officer or employee of or have an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the Agency, such interest shall be disclosed to the Agency and shall be set forth in the minutes of the Agency, and the member, officer or employee having such interest therein shall not participate on behalf of the Agency in the authorization of any such contract. (1981, c. 784, s. 22.)

§ 116-198.28. Additional method.

The foregoing sections of this Article shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or notes under the provisions of this Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes. (1981, c. 784, s. 23.)

§ 116-198.29. Liberal construction.

This Article, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect the purposes thereof. (1981, c. 784, s. 24.)

§ 116-198.30. Inconsistent laws inapplicable.

Insofar as the provisions of this Article are inconsistent with the provisions of any general or special laws, or parts thereof, the provisions of this Article shall be controlling. (1981, c. 784, s. 25.)

ARTICLE 23.***State Education Assistance Authority.*****§ 116-201. Purpose and definitions.**

(b) As used in this Article, the following terms shall have the following meanings unless the context indicates a contrary intent:

- (1) "Article" or "this Article" means this Article 23 of the General Statutes of North Carolina, presently comprising G.S. 116-201 through 116-109.23 [116-209.23];
- (2) "Authority" means the State Education Assistance Authority created by this Article or, if the Authority is abolished, the board, body, commission or agency succeeding to its principal functions, or on whom the powers given by this Article to the Authority shall be conferred by law;
- (3) "Bond resolution" or "resolution" when used in relation to the issuance of bonds is deemed to mean either any resolution authorizing the issuance of bonds or any trust agreement or other instrument securing any bonds;
- (4) "Bonds" or "revenue bonds" means the obligations authorized to be issued by the Authority under this Article, which may consist of revenue bonds, revenue refunding bonds, bond anticipation notes and other notes and obligations, evidencing the Authority's obligation to repay borrowed money from revenues, funds and other money pledged or made available therefor by the Authority under this Article;
- (5) "Eligible institution," with respect to student loans, has the same meaning as the term has in Section 1085 of Title 20 of the United States Code;
- (6) "Eligible institution," with respect to grants and work-study programs, includes all state-supported institutions organized and administered pursuant to Chapter 115A of the General Statutes and all private institutions as defined in subdivision (8) of this subsection;

- (7) "Student obligations" means student loan notes and other debt obligations evidencing loans to students which the Authority may take, acquire, buy, sell, endorse or guarantee under the provisions of this Article, and may include any direct or indirect interest in the whole or any part of any such notes or obligations;
- (8) "Private institution" means an institution other than a seminary, Bible school, Bible college or similar religious institution in this State that is not owned or operated by the State or any agency or political subdivision thereof, or by any combination thereof, that offers post-high school education and is accredited by the Southern Association of Colleges and Schools or, in the case of institutions that are not eligible to be considered for accreditation, accredited in those categories and by those nationally recognized accrediting agencies that the Authority may designate;
- (9) "Reserve Trust Fund" means the trust fund authorized under Section 116-209 of this Article;
- (10) "State Education Assistance Authority Loan Fund" means the trust fund so designated and authorized by Section 116-209.3 of this Article;
- (11) "Student" means a resident of the State, in accordance with definitions of residency that may from time to time be prescribed by the Board of Governors of the University of North Carolina and published in the residency manual of the Board, who, under regulations adopted by the Authority, has enrolled or will enroll in an eligible institution for the purpose of pursuing his education beyond the high school level, who is making suitable progress in his education in accordance with standards acceptable to the Authority and, for the purposes of G.S. 116-209.19, who has not received a bachelor's degree, or qualified for it and who is otherwise classified as an undergraduate under those regulations that the Authority may promulgate; and
- (12) "Student loans" means loans to residents of this State to aid them in pursuing their education beyond the high school level. (1965, c. 1180, s. 1; 1971, c. 392, s. 1; c. 1244, s. 14; 1979, c. 165, s. 1.)

Editor's Note. — Chapter 115A, referred to in subdivision (b)(6) of this section, was repealed by Session Laws 1979, c. 462, s. 1. For present provisions concerning community colleges and technical institutes, see Chapter 115D.

Effect of Amendments. — The 1979 amend-

ment, in subsection (b), rewrote subdivisions (1) through (8), added subdivisions (9) and (10), and rewrote former subdivisions (9) and (10) as present subdivisions (11) and (12).

Only Part of Section Set Out. — As subsection (a) was not changed by the amendment, it is not set out.

OPINIONS OF ATTORNEY GENERAL

Authority's Power to Make Loans. — The North Carolina State Education Assistance Authority has the power to make loans to parents of students for the purpose of paying the costs of their children's education beyond

the high school level. See opinion of Attorney General to Stan C. Broadway, Executive Director, N.C. State Education Assistance Authority, 50 N.C.A.G. 46 (1980).

§ 116-202. Authority may buy and sell students' obligations; undertakings of Authority limited to revenues.

In order to facilitate the vocational and college education of residents of this State and to promote the industrial and economic development of the State, the State Education Assistance Authority (hereinafter created) is hereby authorized and empowered to buy and sell obligations of students attending institu-

tions of higher education or post-secondary business, trade, technical, and other vocational schools, which obligations represent loans made to such students for the purpose of obtaining training or education.

No bonds, as this term is defined in this Article, are deemed to constitute a debt of the State, or of any political subdivision thereof or a pledge of the faith and credit of the State or of any political subdivision, but are payable solely from the funds of the Authority. All bonds shall contain on their faces a statement to the effect that neither the State nor the Authority is obligated to pay the same or the interest thereon except from revenues of the Authority and that neither the faith and credit nor the taxing power of the State or of any political subdivision is pledged to the payment of the principal of or the interest on the bonds.

All expenses incurred in carrying out the provisions of this Article shall be payable solely from funds provided under the provisions of this Article and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this Article. (1965, c. 1180, s. 1; 1967, c. 955, s. 1; 1979, c. 165, s. 2.)

Effect of Amendments.— The 1979 amendment, in the first sentence of the second paragraph, substituted "No bonds, as this term is defined in this Article, are" for "No act or undertaking of the Authority shall be" at the beginning of the sentence, deleted "such" before "political subdivision, but" and substituted "are" for "shall be" preceding "payable" near the end of the sentence. In the second sentence of the second paragraph, the amendment sub-

stituted "All bonds" for "All such acts and undertakings" at the beginning of the sentence, substituted "on their faces" for "on the face" near the beginning and "is" for "shall be" after "Authority" near the middle of the sentence, deleted "thereof" after "subdivision" near the end of the sentence, and substituted "the bonds" for "such acts and undertakings" at the end of the sentence.

§ 116-203. Authority created as subdivision of State; appointment, terms and removal of board of directors; officers; quorum; expenses and compensation of directors.

There is hereby created and constituted a political subdivision of the State to be known as the "State Education Assistance Authority." The exercise by the Authority of the powers conferred by this Article shall be deemed and held to be the performance of an essential governmental function.

The Authority shall be governed by a board of directors consisting of seven members, each of whom shall be appointed by the Governor. Two of the first members of the board appointed by the Governor shall be appointed for terms of one year, two for terms of two years, two for terms of three years, and one for a term of four years from the date of their appointment; and thereafter the members of the board shall be appointed for terms of four years. Vacancies in the membership of the board shall be filled by appointment of the Governor for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are State, county, town and district officers. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice-chairman, and shall also elect annually a secretary, or a secretary-treasurer, who may or may not be a member of the board. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Four directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership

of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The favorable vote of at least a majority of the members of the board present at any meeting is required for the adoption of any resolution or motion or for other official action. The members of the board are entitled to the travel expenses, subsistence allowances and compensation provided in G.S. 138-5. These expenses and compensation shall be paid from funds provided under this Article, or as otherwise provided. (1965, c. 1180, s. 1; 1979, c. 165, s. 3.)

Effect of Amendments. — The 1979 amendment rewrote the last three sentences of the second paragraph.

§ 116-209. Reserve trust fund created; transfer of escheat fund; pledge of security interest for payment of bonds; administration.

The appropriation made to the Authority under this Article shall be used exclusively for the purpose of acquiring contingent or vested rights in obligations which it may acquire under this Article; such appropriations, payments, revenue and interest as well as other income received in connection with such obligations is hereby established as a trust fund. Such fund shall be used for the purposes of the Authority other than maintenance and operation.

The maintenance and operating expenses of the Authority shall be paid from funds specifically appropriated for such purposes. No part of the trust fund established under this section shall be expended for such purposes.

The State Treasurer shall be the custodian of the assets of the Authority and shall invest them in accordance with the provisions of G.S. 147-69.2 and 147-69.3. All payments from the accounts thereof shall be made by him issued upon vouchers signed by such persons as are designated by the Authority. A duly attested copy of a resolution of the Authority designating such persons and bearing on its face the specimen signatures of such persons shall be filed with the State Treasurer as his authority for issuing warrants upon such vouchers.

The trust fund is designated "Reserve Trust Fund" and shall be maintained by the Authority, except as otherwise provided, pursuant to the provisions of this Article, as security for or insurance respecting any bonds or other obligations issued by the Authority under this Article. The corpus of the Escheat Fund, including all future additions other than the income, are transferred to, and become, a part of the Reserve Trust Fund and shall be accounted for, administered, invested, reinvested, used and applied as provided in G.S. 116A-8, 116A-9 and 116A-10. The Authority may pledge and vest a security interest in all or any part of the Reserve Trust Fund by resolution adopted or trust agreement approved by it as security for or insurance respecting the payment of bonds or other obligations issued under this Article. The Reserve Trust Fund shall be held, administered, invested, reinvested, used and applied as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of this Article and G.S. 116A-8 through 116A-11. (1965, c. 1180, s. 1; 1979, c. 165, s. 4; c. 467, s. 8.)

Editor's Note. — Sections 116A-8 through 116A-11, referred to in this section, were repealed by Session Laws 1979, 2nd Session, c. 1311, s. 1, effective Jan. 1, 1981. For present provisions covering the subject matter of repealed Chapter 116A, see Chapter 116B.

Effect of Amendments. — The first 1979 amendment added the last paragraph.

The second 1979 amendment added "and shall invest them in accordance with the provisions of G.S. 147-69.2 and 147-69.3" at the end of the first sentence of the second para-

graph, and deleted the former third and fourth paragraphs, which gave to the Authority full power to invest and reinvest trust funds and securities which are permitted for the invest-

ment of reserves of domestic life insurance companies, and gave the Authority the option to delegate its powers of investment to the State Treasurer.

§ 116-209.3. Additional powers.

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated "State Education Assistance Authority Loan Fund" (the "Loan Fund") which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to G.S. 116A-9. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of G.S. 116A-9 and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account. (1967, c. 1177; 1971, c. 392, s. 4; 1979, c. 165, s. 5.)

Editor's Note.— Section 116A-9, referred to in this section, was repealed by Session Laws 1979, 2nd Session, c. 1311, s.1, effective Jan. 1, 1981. For present provisions covering the subject matter of repealed Chapter 116A, see Chapter 116B.

Effect of Amendments. — The 1979 amendment added the last two sentences of the first paragraph.

§ 116-209.4. Authority to issue bonds.

The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority in such principal amounts as the Board of Directors shall determine to be necessary. The bonds shall be designated, subject to such additions or changes as the Authority deems advisable, "State Education Assistance Authority Revenue Bonds,

Series,” inserting in the blank space a letter identifying the particular series of bonds.

The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding 30 years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The Authority may also provide for the authentication of the bonds by a fiscal agent. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effectuate the purposes of this Article.

The Authority is authorized to provide in any resolution authorizing the issuance of bonds for pledging or assigning as security for its revenue bonds, subject to any prior pledge or assignment, and for deposit to the credit of the sinking fund, any or all of its income, receipts, funds or other assets, exclusive of bond proceeds and other funds required to be deposited to the credit of the Loan Fund, of whatsoever kind from time to time acquired or owned by the Authority, including all donations, grants and other money or property made available to it, payments received on student loans, such as principal, interest and penalties, if any, premiums on student loan insurance, fees, charges and other income derived from services rendered or otherwise, proceeds of property or insurance, earnings and profits on investments of funds and from sales, purchases, endorsements or guarantees of obligations, as defined in G.S. 116-201 hereof, and other securities and instruments, contract rights, any funds, rights, insurance or other benefits acquired pursuant to any federal law or contract to the extent not in conflict therewith, money recovered through the enforcement of any remedies or rights, and any other funds or things of value which in the determination of the Authority may enhance the marketability of its revenue bonds. Money in the sinking fund shall be disbursed in such manner and under such restrictions as the Authority may provide in the resolution authorizing the issuance of such bonds. Unless otherwise provided in the bond resolution, the revenue bonds at any time issued hereunder shall be entitled to payment from the sinking fund without preference or priority of the bonds first issued. Bonds may be issued under the provisions of this Article without obtaining, except as otherwise expressly provided in this Article, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any

conditions or things other than those proceedings, conditions or things which are specifically required by this Article and the provisions of the resolution authorizing the issuance of such bonds.

The Authority is authorized to provide by resolution or in any trust agreement for the issuance of revenue refunding bonds of the Authority for the purpose of refunding, or advance refunding and paying, any bonds then outstanding, which have been issued under the provisions of this Article, including the payment of any redemption premium and of any interest accrued or to accrue up to the date of redemption of the bonds, and, if deemed advisable by the Authority, for making student loans or acquiring obligations under this Article. The issuance of the revenue refunding bonds, the maturities and other details, the rights of the holders and the rights, duties and obligations of the Authority, shall be governed by the appropriate provisions of this Article relating to the issuance of revenue bonds. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Article. If sold, in addition to any other authorized purpose, the proceeds may be deposited in an escrow or other trust fund and invested, in whole or in part, and with the earnings from the investments, may be applied to the purchase or to the redemption prior to, or to payment at maturity, of outstanding bonds, all as provided by resolution or in trust agreement securing the bonds. (1967, c. 1177; 1971, c. 392, ss. 5-7; 1979, c. 165, s. 6.)

Effect of Amendments. — The 1979 amendment substituted "in such principal amounts as the Board of Directors shall determine to be necessary" for "in an aggregate principal

amount outstanding at any time of not exceeding fifty million dollars (\$50,000,000)" at the end of the first sentence in the first paragraph and rewrote the last paragraph.

§ 116-209.14. Annual reports.

The Authority shall, following the close of each fiscal year, publish an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report shall set forth a complete operating and financial statement covering the operations of the Authority during the year. The Authority shall cause an audit of its books and accounts to be made at least once in each year by the State Auditor or by certified public accountants. (1967, c. 1177; 1979, c. 165, s. 7.)

Effect of Amendments. — The 1979 amendment deleted "promptly" after "shall" near the beginning of the first sentence, substituted "publish" for "submit" near the middle of that

sentence, deleted "such" after "Each" near the beginning of the second sentence, and substituted "the" for "such" near the end of that sentence.

§ 116-209.17. Establishment of student assistance program.

The Authority is authorized, in addition to all other powers and duties vested or imposed under this Article, to establish and administer a statewide student assistance program for the purpose of removing, insofar as may be possible, the financial barriers to education beyond the high school level for needy North Carolina undergraduate students at public or private institutions in this State. This objective shall be accomplished through a comprehensive program under which the financial ability of each student and of his family, under standards prescribed by the Authority, is measured against the reasonable costs, as determined by the Authority, of the educational program which the student proposes to pursue. Needs of students for financial assistance shall, to the extent of the availability of funds from federal, State, institutional or other sources, be met through work-study programs, loans, grants and out-of-term

employment, or a combination of these forms of assistance. With respect to grants made pursuant to this Article, no student is eligible to receive benefits under this student assistance program for a total of more than 45 months of full-time, post-high school level education. (1971, c. 392, s. 11; 1979, c. 165, s. 8.)

Effect of Amendments. — The 1979 amendment added "With respect to grants made pursuant to this Article" at the beginning of the

last sentence and substituted "is" for "shall be" preceding "eligible" in the last sentence.

§ 116-209.19. Grants to students.

The Authority is authorized to make grants to students enrolled or to be enrolled in eligible institutions in North Carolina out of such money as from time to time may be appropriated by the State or as may otherwise be available to the Authority for such grants. The Authority, subject to the provisions of this Article and any applicable appropriation act, shall adopt rules, regulations and procedures for determining the needs of the respective students for grants and for the purpose of making such grants. The amount of any grant made by the Authority to any student, whether enrolled or to be enrolled in any private institution or any tax-supported public institution, shall be determined by the Authority upon the basis of substantially similar standards and guides that shall be set forth in the Authority's rules, regulations and procedures; provided, however, that grants made in any fiscal year to students enrolled or to be enrolled in private institutions may be increased to compensate, in whole or in part, for the average annual State appropriated tuition subsidy for such fiscal year, determined as provided herein. The average annual State appropriated subsidy for each fiscal year shall be determined by the Advisory Budget Commission, after consultation with the Secretary of Administration, Board of Governors of the University of North Carolina and the Authority, for each of the two categories of tax-supported institutions, being (i) institutions, presently 16, that provide education of the collegiate grade and grant baccalaureate degrees and (ii) institutions, such as community colleges and technical institutes created and existing under Chapter 115A of the General Statutes. The average annual State appropriated subsidy for each of such two categories of institutions shall mean the amount of the total appropriations of the State for the respective fiscal years under the current operations budgets, pursuant to the Executive Budget Act reasonably allocable to undergraduate students enrolled in such institutions exclusive of the Division of Health Affairs of the University of North Carolina and the North Carolina School of the Arts for all institutions in such category, all as shall be determined by the Advisory Budget Commission after consultation as above provided, divided by the budgeted number of North Carolina undergraduate students to be enrolled in such fiscal year.

The Authority, in determining the needs of students for grants, may among other factors, give consideration to the amount of other financial assistance that may be available to the students, such as nonrepayable awards under the Basic Educational Opportunity Grant Program, the Health Professions Education Assistance Act or other student assistance programs created by federal law. (1971, c. 392, s. 11; c. 1244, s. 14; 1975, c. 879, s. 46; 1979, c. 165, s. 9.)

Editor's Note. — Chapter 115A, referred to in this section, was repealed by Session Laws 1979, c. 462, s. 1. For present provisions concerning community colleges and technical institutes, see Chapter 115D.

Effect of Amendments. — The 1979 amendment, in the second paragraph, transferred "among other factors" to its present location from its former location after "consideration to," substituted "the" for "such" after "available

to" and added "Basic" near the middle of the paragraph, and added "or other student assistance programs created by federal law" at the end of the paragraph.

§ 116-209.24. Parental loans.

(a) Policy. — The General Assembly of North Carolina hereby finds and declares that the making and insuring of loans to the eligible parents of resident students is fully consistent with and furthers the long established policy of the State to encourage, promote and assist the education of the people of the State as more fully set forth in G.S. 116-201(a).

(b) Definitions. — As used in this section, the following terms shall have the following meanings:

- (1) "Obligations", "student obligations", or "student loan obligations" as defined under G.S. 116-201(b) (7) includes, unless the context indicates a contrary intent, parental obligations.
- (2) "Parent" means a student's mother, father, adoptive parent, or legal guardian of the student if such guardian is required by court order to use his or her own financial resources to support that student.
- (3) "Parental loans" means loans made or guaranteed by the authority to a parent of an eligible student.
- (4) "Parental obligations" means obligations evidencing loans made pursuant to subsection (c) of this section.
- (5) "Resident student" means a student deemed by appropriate officials to qualify for the in-State tuition rate under some provision of G.S. 116-143.1.
- (6) "Student loans" includes, unless the context indicates a contrary intent, parental loans.

(c) Parental Assistance. — The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of loans to parents of resident students in order to facilitate the vocational and college education of such students who are enrolled or to be enrolled in eligible institutions. The Authority is also authorized to provide such other services and loan assistance to parents of resident students as the Authority shall deem necessary or desirable for carrying out the purpose of this section and for qualifying for loans, grants, insurance, and other benefits and assistance under any program of the United States now or hereafter authorized fostering loans to eligible parents of resident students.

(d) Authorization to Buy and Sell Parental Obligations. — The Authority is hereby authorized and empowered to buy and sell parental obligations.

(e) Authorization to Issue Bonds. — The Authority is hereby authorized to provide for the issuance, at one time or from time to time, of bonds or revenue bonds, as such terms are defined in G.S. 116-201(4), in conformity with provisions of this section. (1981, c. 794, s. 1.)

ARTICLE 24.

Learning Institute of North Carolina.

§§ 116-210, 116-211: Repealed by Session Laws 1979, c. 744, s. 8, effective January 1, 1980.

ARTICLE 26.

Liability Insurance of Self-Insurance.

§ 116-221. Sovereign immunity.

CASE NOTES

Cited in *Roberson v. Dale*, 464 F. Supp. 680
(M.D.N.C. 1979).

Chapter 116A.

Escheats and Abandoned Property.

§§ 116A-1 to 116A-11: Repealed by Session Laws 1979, 2nd Session, c. 1311, s. 1, effective January 1, 1981.

Cross References.— For present provisions covering the subject matter of the repealed chapter, see §§ 116B-1 through 116B-49.

Chapter 116B.

Escheats and Abandoned Property.

Article 1.

Escheats.

Sec.

- 116B-1. Escheats to Escheat Fund.
- 116B-2. Unclaimed real and personal property escheats to the Escheat Fund.
- 116B-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.
- 116B-4. Claim for escheated property.
- 116B-5 to 116B-9. [Reserved.]

Article 2.

Abandoned Property.

- 116B-10. Definitions.
- 116B-11. Property subject to custody and control of the State.
- 116B-12. Property held by financial institutions.
- 116B-13. Property held by life insurers.
- 116B-14. Property held by other insurers.
- 116B-15. Property held by utilities.
- 116B-16. Property held by business associations.
- 116B-17. Property held in the course of dissolution or following merger.
- 116B-18. Property held by fiduciary.
- 116B-19. Property held by governmental agents.
- 116B-20. Salary, wages or other compensation.
- 116B-21. Property held in the ordinary course of business.
- 116B-22 to 116B-26. [Reserved.]

Article 3.

Administration of Abandoned Property.

- 116B-27. Escheat Fund.

Sec.

- 116B-28. Notice by holders to owners required.
- 116B-29. Report of abandoned property by holder to Commissioner of Insurance or Treasurer.
- 116B-30. Preparation of list of owners by State Treasurer and Commissioner of Insurance.
- 116B-31. Payment or delivery of abandoned property.
- 116B-32. Relief from liability by payment or delivery.
- 116B-33. Income accruing after payment or delivery.
- 116B-34. Periods of limitation not a bar.
- 116B-35. Sale, retention or disposal of abandoned property.
- 116B-36. Administration of Escheat Fund; Escheat Account.
- 116B-37. Distribution of income of fund.
- 116B-38. Claim for abandoned property paid or delivered.
- 116B-39. Examination of records.
- 116B-40. Proceeding to allow examination or compel delivery.
- 116B-41. Penalties.
- 116B-42. Regulations.
- 116B-43. Restriction on agreement to locate reported property.
- 116B-44. Effect of laws of other states.
- 116B-45. Severability.
- 116B-46. Transition and application.
- 116B-47. Employment of persons with specialized skills or knowledge.
- 116B-48. Agreements to coordinate the collection and administration of abandoned property.
- 116B-49. Certification by holders with tax return.

ARTICLE 1.

Escheats.

§ 116B-1. Escheats to Escheat Fund.

All real estate which has accrued to the State since June 30, 1971, or shall hereafter accrue from escheats, shall be vested in the Escheat Fund. Title to any such real property which has escheated to the Escheat Fund shall be conveyed by deed in the manner now provided by G.S. 146-74 through G.S. 146-78, except as is otherwise provided herein: Provided, that in any action in the superior court of North Carolina wherein the State Treasurer is a party, and wherein said court enters a judgment of escheat for any real property, then, upon petition of the State Treasurer in said action, said court shall have the authority to appoint the State Treasurer or his designated agent as a commissioner for the purpose of selling said real property at a public sale, for cash, at

the courthouse door in the county in which the property is located, after properly advertising the sale according to law. The said commissioner, when appointed by the court, shall have the right to convey a valid title to the purchaser of the property at public sale. The funds derived from the sale of any such escheated real property by the commissioner so appointed shall thereafter be paid by him into the Escheat Fund. (Const., art. 9, s. 7; 1789, c. 306, s. 2; P. R.; R. C., c. 113, s. 11; Code, s. 2626; Rev., s. 4282; C. S., s. 5784; 1947, c. 494; 1961, c. 257; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-2. Unclaimed real and personal property escheats to the Escheat Fund.

Whenever the owner of any real or personal property situated or located within this State dies intestate, or dies testate but did not dispose of all real or personal property by will, without leaving surviving any heirs, as defined in G.S. 29-2(3), to inherit said property under the laws of this State, such real and personal property shall escheat. The State Treasurer shall have the right to institute a civil action in the superior court of any county in which such real or personal property is situated, against any administrator, executor, and unknown heirs or unknown claimants as party defendants, which unknown heirs or unknown claimants may be served with summons and notice of such action by publication as is now provided by the laws of this State. If an administrator or executor has been appointed, he shall make a determination that there are no known heirs or unknown claimants and shall inform the State Treasurer of that determination. The superior court in which such civil action is instituted shall have the authority to enter a judgment therein declaring the real and personal property unclaimed as having escheated, and the real property may be sold according to the provisions of G.S. 116B-1. A default final judgment may be entered by the clerk of the superior court in such cases when no answer is filed by the administrator, executor, unknown heirs or unknown claimants to the complaint, or if any answer is filed, the allegations of the complaint are either admitted or not denied by such party defendants, and no claim is made in the answer to the property left by said deceased person. The funds derived from such sale shall be paid into the Escheat Fund where said funds, together with all other escheated funds, shall be held without liability for profit or interest, subject to any just claims therefor. (1957, c. 1105, s. 1; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-3. Unclaimed personalty on settlements of decedents' estates to the Escheat Fund.

All sums of money or other personal estate of whatever kind which shall remain in the hands of any administrator, executor, administrator c.t.a., or personal representative when the administration of an estate of a person dying intestate, or partially intestate, without leaving any known heirs to inherit same, is ready to be closed, unrecovered or unclaimed by suit, by creditors, heirs, or others entitled thereto, shall, prior to the closing of the administration of the estate, be paid or delivered by such administrator or executor to the State Treasurer as an escheat and shall be included in the disbursements in the final account of such estate. In such cases as above described, the State Treasurer is authorized to demand, sue for, recover, and collect such unclaimed moneys or other personal estate of whatever kind from any administrator or executor after the estate is ready to be closed, or from the clerk of the superior court if the unclaimed assets have been paid over to him, and the State Treasurer shall hold the same without liability for profit or interest, subject to any just claims therefor. The provisions of this section and G.S. 116B-2 shall apply to the estate

of a person missing for 30 days or more and the State Treasurer may bring an action to have a receiver appointed in such case under the provisions of Chapter 28C, Estates of Missing Persons. (1957, c. 1105, ss. 2, 2½; 1971, c. 1135, s. 2; 1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 1.)

Effect of Amendments. — The 1981 amendment, in the last sentence, substituted "30 days or more" for "seven years" and "a receiver" for "an administrator" and added "under the provisions of Chapter 28C, Estates of Missing Persons" at the end of the sentence.

§ 116B-4. Claim for escheated property.

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to G.S. 116B-27 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of Chapter 28A. The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. The provisions of G.S. 116B-38(b) and (c) shall apply to a claim under this subsection. (1979, 2nd Sess., c. 1311, s. 1.)

§§ 116B-5 to 116B-9: Reserved for future codification purposes.

ARTICLE 2.

Abandoned Property.

§ 116B-10. Definitions.

For the purposes of Articles 2 and 3 of this Chapter, the following words shall have the following meanings, unless a different meaning is required by the context.

- (1) **Business Association.** — "Business association" shall mean any proprietorship, private corporation, joint stock company, business trust, partnership or association, two or more individuals having joint or common interest, or any other legal or commercial entity engaged in business, including corporations and organizations under the authority of Chapters 53A and 54.
- (2) **Commissioner.** — "Commissioner" shall mean the duly elected and serving Commissioner of Insurance of North Carolina or his designated agent.
- (3) **Financial Institution.** — "Financial institution" shall mean any trust company, savings bank, industrial bank, savings and loan association, building and loan association, commercial bank, credit union, federal association, investment company, or other business association, which is chartered under federal or State law, solicits, receives or accepts money or its equivalent on deposit and loans money as a regular business.
- (4) **Holder.** — "Holder" shall mean any person in possession of property subject to this Chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this Chapter.

- (5) **Insurer.** — “Insurer” shall mean any business association doing business in this State, as a life, fire, casualty, motor vehicle liability, accident and health or other insurer referred to and regulated under Chapter 58 of the General Statutes or a hospital, medical or dental service corporation organized under Chapter 57 of the General Statutes.
- (6) **Owner.** — “Owner” shall mean a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this Chapter, or his legal representative.
- (7) **Person.** — “Person” shall mean any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.
- (8) **Terminate.** — “Terminate” shall mean to end in any manner, including lapse, expire or cease under its terms or otherwise.
- (9) **Treasurer.** — “Treasurer” shall mean the duly elected and serving Treasurer of the State of North Carolina or his designated agent.
- (10) **Utility.** — “Utility” shall mean any person who owns or operates, for public use, any plant, equipment, property, franchise or license, for transportation of the public, the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.
- (11) **Written Instrument.** — “Written instrument” shall mean a document in writing that evidences a legal right, obligation or interest. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 2.)

Effect of Amendments. — The 1981 amendment added “or a hospital, medical or dental service corporation organized under Chapter 57

of the General Statutes” at the end of subdivision (5).

§ 116B-11. Property subject to custody and control of the State.

Personal property that is deemed unclaimed or abandoned under this Chapter is subject to the custody and control of the State if it is:

- (1) **Tangible.** — Tangible and physically located within the State; or
- (2) **Intangible.** — Intangible, and
 - a. The last known address of the owner, as shown by the records of the holder, is within the State; or
 - b. The last known address of the owner as shown by the records of the holder is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and the domicile of the holder is within the State; or
 - c. No address of the owner appears on the records of the holder and the domicile of the holder is within the State; or
 - d. No address of the owner appears on the records of the holder and the domicile of the holder is not within the State, but it is proved that the last known address of the owner is in the State; or
 - e. If the intangible property is a sum payable on a money order, traveler's check or similar written instrument, and
 1. The instrument was purchased within the State, as shown by the records of the holder;
 2. The place of purchase of the instrument is not shown in the records of the holder and the holder's principal place of business is within the State; or

3. The place of purchase of the instruments, as shown by the records of the holder, is within a jurisdiction, the laws of which do not provide for the escheat or custodial taking of the property, and the holder's principal place of business is within the State. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-12. Property held by financial institutions.

(a) Deposits and Funds. — Any demand, savings or matured time deposit in a financial institution, or any funds paid toward the purchase of shares or other interest in a financial institution shall be presumed abandoned if the financial institution receives information that the owner no longer resides at the address listed in the holder's records and is unable to locate the owner and if, within the preceding five years, as to any demand deposit, or a savings or time deposit or interest having a value of one thousand dollars (\$1,000) or less, or within the preceding 10 years, as to any such savings or time deposit or interest having a value of more than one thousand dollars (\$1,000), the owner has not:

- (1) Increased or decreased the amount of the deposit, shares or claim, or presented to the holder the passbook, evidence of deposit or other appropriate record for the crediting of interest or dividends;
- (2) Corresponded in writing with the holder concerning the deposit, shares or claim; or
- (3) Otherwise indicated an interest in the deposit, shares or claim as evidenced by a writing on file with the holder.

The financial institution shall make reasonable efforts to locate the owner and to determine whether its records disclose a different address for the owner.

(b) Written Instruments. — Any sum payable on a check certified in the State or on any written instrument issued in the State on which a financial institution is directly liable shall be presumed abandoned if, within 10 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

- (1) Negotiated the instrument;
- (2) Corresponded in writing with the financial institution concerning it; nor
- (3) Otherwise indicated an interest by a writing on file with the financial institution.

(c) Traveler's Checks. — Any sum payable on a traveler's check, money order or a similar written instrument on which a financial institution or other business association is directly liable shall be presumed abandoned if, within 15 years from the date payable, or from the date of issuance, if payable on demand, the owner has not:

- (1) Negotiated the instrument;
- (2) Corresponded in writing with the financial institution or other business association concerning it; nor
- (3) Otherwise indicated an interest as indicated by a writing on file with the financial institution or other business association.

(d) Safe Deposit Box. — Any funds or other personal property, tangible or intangible, contained in or removed from a safe deposit box or other safekeeping repository shall be presumed abandoned if the owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the State Treasurer.

(e) Charges, Interest or Dividends on Abandoned Property. —

- (1) Reasonable service charges may be levied against deposits or accounts presumed to be abandoned, provided those charges may not exceed the charges levied against similar active deposits or accounts or the actual cost of administering the account or deposit.

- (2) Interest or dividends due on any deposits, accounts, funds or shares presumed to be abandoned shall not be discontinued or diverted because of the inactivity or during the period prior to abandonment. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-13. Property held by life insurers.

(a) Funds Owed under a Policy or Contract. — Any funds held or owing by a life insurer that are due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated shall be presumed abandoned if they have not been claimed or paid within 10 years after becoming due or payable as established from the insurer's records. Funds payable according to the insurer's records are deemed due and payable although the policy or contract has not been surrendered as required. The insurer shall make reasonable efforts to locate the insured or annuitant and to determine whether its records disclose a different address for the insured or annuitant.

(b) Presumption of Address of Beneficiary. — If a person other than the insured or annuitant is entitled to the funds and no address of the person is known to the insurer or if it is not definite and certain from the records of the insurer what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

(c) Presumption of Maturity. — A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured, and the proceeds are deemed to be due and payable if the policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has, within the preceding five years, assigned, readjusted or paid premiums on the policy, negotiated a dividend check, made payments on a loan, or corresponded in writing with the life insurer concerning the policy. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-14. Property held by other insurers.

(a) Funds Owed under a Policy or Contract. — Any funds held or owing by a fire, casualty, or any other insurer or surety as defined in G.S. 58-2(3) or a hospital, medical or dental service corporation organized under Chapter 57 of the General Statutes that are due and payable, as established from the records of the insurer or surety either to an insured, a principal, or other claimant under any insurance policy or contract shall be presumed abandoned if they have not been claimed or paid within five years after becoming due or payable. Funds payable according to the insurer's or surety's records are deemed due and payable although the policy or contract has not been surrendered as required.

(b) Presumption of Address of Beneficiary. — If a person other than the insured, the principal or the claimant is entitled to the funds and no address of the person is known to the insurer or surety or if it is not definite and certain from the records of the insurer or surety what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the principal or the claimant according to the records of the insurer or surety. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 3.)

Effect of Amendments. — The 1981 amendment inserted "or a hospital, medical or dental service corporation organized under Chapter 57

of the General Statutes" in the second sentence of subsection (a).

§ 116B-15. Property held by utilities.

(a) Deposits. — Any deposit, advance, toll, collateral, security or other property held by a utility to secure payment or as an advance for services to be furnished shall be presumed abandoned if it has not been claimed or returned within five years after:

- (1) It was due to or demandable by the owner under the terms of the agreement; or
- (2) The termination of services to the owner.

(b) Refunds. — Any funds which a utility has been ordered to refund shall be presumed abandoned if they have not been claimed or paid within five years after the date they became payable in accordance with the final determination or order providing for the refund.

(c) Notice Required. — Unless other written notice is required by statutory provision or order of a court or other authority having jurisdiction, every utility shall give written notice, mailed or delivered to the last known address of the owner, of each deposit or refund within 30 days after the same shall be due and demandable. Such notice shall be in addition to, and not in lieu of, the notice required by G.S. 116B-28. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-16. Property held by business associations.

(a) Dividends. — Any dividend, profit, distribution, interest, payment on principal or other funds held or owing by a business association for or to its shareholder, certificate holder, member, bond holder or other security holder, or a participating patron of a cooperative shall be presumed abandoned if within five years after the date prescribed for delivery or payment, it has not been claimed or the owner has not corresponded in writing with the holder concerning it.

(b) Stocks. — Any intangible interest in a business association, as evidenced by stock records or membership records of the association, shall be presumed abandoned if, for five years:

- (1) The owner of the interest has not claimed a dividend or other sum referred to in subsection (a); or
- (2) The owner of the interest has not corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association.

(c) Dividends on Abandoned Stocks. — Any dividends or other distributions held for or owing to a person and attached to a stock or security deemed abandoned shall also be presumed abandoned and shall not be diverted or discontinued during the period prior to the abandonment. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-17. Property held in the course of dissolution or following merger.

(a) Dissolution. — All property distributable in the course of a voluntary or involuntary dissolution of a business association, financial institution, insurer or utility shall be presumed abandoned if it is unclaimed within six months of the date of final dissolution.

(b) Merger. — All shares of stock that are not delivered following the merger of two or more corporations and are not claimed within two years from the date they became deliverable shall be presumed abandoned. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-18. Property held by fiduciary.

(a) **Property.** — All property held in a fiduciary capacity for the benefit of another person shall be presumed abandoned if, within five years of its becoming payable or distributable, the owner has not:

- (1) Increased or decreased the principal; or
- (2) Accepted payment of principal or income; or
- (3) Corresponded in writing with the fiduciary concerning the property; or
- (4) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

(b) **Income.** — Any income or increment due on property deemed abandoned under subsection (a) shall also be presumed abandoned and shall not be discontinued or diverted during the period prior to the abandonment. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-19. Property held by governmental agents.

All property not otherwise covered by this Chapter, and held for the owner by a court, public corporation or authority, or agent or instrumentality of the United States, this State or any other state, or by a public officer or political subdivision thereof, shall be presumed abandoned if it is not claimed within five years of becoming payable or distributable. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-20. Salary, wages or other compensation.

Unpaid and unclaimed salary, wages or other compensation held by or owing by any business association which are due to any person or persons shall be presumed abandoned if, within five years after the date that the unpaid and unclaimed salary, wages or other compensation became due and payable, the same have not been claimed by the owner. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-21. Property held in the ordinary course of business.

(a) **Property.** — All property, not otherwise covered in this Chapter, held in the ordinary course of the holder's business, including accounts payable and other obligations, and whether one or more articles of property, accounts payable or obligations, which has a value or an aggregate value of five hundred dollars (\$500.00) or more, shall be presumed abandoned if it has not been claimed within five years after becoming payable or distributable.

(b) **Income and Charges.** — Any income or increment due on property deemed abandoned under subsection (a) shall also be presumed abandoned and shall not be discontinued or diverted during the period prior to abandonment. Lawful charges may be deducted from property that is presumed to be abandoned, provided the lawful charges are specifically authorized by statute or by a valid enforceable contract. (1979, 2nd Sess., c. 1311, s. 1.)

§§ 116B-22 to 116B-26: Reserved for future codification purposes.

ARTICLE 3.

Administration of Abandoned Property.

§ 116B-27. Escheat Fund.

All property escheated or abandoned under the provisions of this Chapter and all property escheated or abandoned since June 30, 1971, under the provisions of former Chapter 116A, as amended, shall be paid into a fund to be administered by the Treasurer, which fund shall be designated the Escheat Fund. No escheated or abandoned property heretofore paid or delivered to the University of North Carolina pursuant to any constitutional provision or statute of this State shall be subject to the provisions of this Chapter. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-28. Notice by holders to owners required.

(a) Insurers. — Every insurer required to file a report pursuant to G.S. 116B-29 shall determine, prior to March 1 of each year, all owners who, as of the preceding December 31, appear entitled to property of the value of fifty dollars (\$50.00) or more, presumed abandoned under this Chapter, and, on or before March 1, shall mail, first class postage prepaid, a notice to the last known address of each such owner.

(b) Other Holders. — Every holder, other than insurers, required to file a report pursuant to G.S. 116B-29 shall determine, prior to November 1 of each year, all owners who, as of the preceding June 30, appear entitled to property of the value of fifty dollars (\$50.00) or more, presumed abandoned under this Chapter, and, on or before November 1, shall mail, first class postage prepaid, a notice to the last known address of each such owner. A holder need not mail a notice to an owner for which the holder has no address.

(c) Contents. — Each notice required by this section shall contain:

- (1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;
- (2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;
- (3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following February 1, or if the holder is an insurer, by the following November 1, the property will be placed in the custody of the State Treasurer, to whom all further claims shall be directed.

(d) Charges for Notices. — The holder shall be entitled to deduct from the property of each owner to whom notice is sent an amount not to exceed fifty cents (50¢) to defray the expense of mailing notice. If the property is other than cash in the possession of the holder, the holder may submit to the Escheat Fund, with the certification hereinafter provided for, a sworn itemized statement of charges for notices mailed, not to exceed fifty cents (50¢) per notice, which shall be paid by the Escheat Fund within 30 days following receipt of the statement. The Escheat Fund shall charge the accounts of the respective owners with any charges so paid to holders.

(e) Certification of Mailing; Penalties; Right of Owners. — Every holder filing a report pursuant to G.S. 116B-29 shall certify to the Treasurer therewith that the notices required by subsections (a) and (b) of this section

have been mailed to the last known address of every owner named in the report. Failure or refusal to certify after written demand by the Treasurer or filing false certification shall be a misdemeanor, punishable, upon conviction, by a fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000) as the court, in its discretion, shall determine. Any owner who has suffered loss or damage by reason of the failure of a holder to mail the notice required by this section may recover actual loss or damage from the holder in an appropriate action at law.

(f) Other Notice. — All holders shall make reasonable efforts to locate and communicate with the owner prior to filing the report required by G.S. 116B-30 in order to prevent abandonment from being presumed, including the exercise of due diligence to determine whether he possesses a different address for the owner.

(g) The Department of Revenue may use the dates prescribed in subsection (a) of this section for insurers in mailing notices of unclaimed property. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 4-6.)

Effect of Amendments. — The 1981 amendment substituted "March 1" for "May 1" in two places in subsection (a), added the second sentence of subsection (b) and substituted "November 1" for "August 1" in subdivision (3) of subsection (c).

§ 116B-29. Report of abandoned property by holder to Commissioner of Insurance or Treasurer.

(a) Reports to Commissioner of Insurance and Treasurer. — Every insurer holding property presumed abandoned under the provisions of one or more of the following sections, G.S. 116B-13, 116B-14, 116B-16, 116B-17, 116B-20, or 116B-21, shall report to the Commissioner of Insurance, with respect to that property; however, payment of such property shall be to the Treasurer in accordance with G.S. 116B-31. Every other person holding funds or other property, tangible or intangible, presumed abandoned under this Chapter shall report to the State Treasurer with respect to that property.

(b) Contents. — The report shall be verified and shall include:

- (1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of twenty-five dollars (\$25.00) or more;
- (2) In the case of unclaimed funds of an insurer, the full name of the insured or annuitant and his last known address according to the insurer's records;
- (3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under twenty-five dollars (\$25.00) each may be reported in the aggregate;
- (4) The date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and
- (5) Other information which the Treasurer prescribes by rule.

(c) Names of Prior Holders. — If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) Time of Filing. — The report shall be filed before March 1 of each year as of the prior June 30, but the report of insurers shall be filed before May 1 of each year as of the prior December 31. The Treasurer, in his discretion, may postpone the reporting date for a period not exceeding six months upon written

request by any person required to file a report. The Department of Revenue may use the dates prescribed in this subsection for insurers in filing reports of unclaimed property with the State Treasurer.

(e) Verification. — Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 7, 8.)

Effect of Amendments. — The 1981 amendment substituted "one or more of the following sections, G.S. 116B-13, 116B-14, 116B-16, 116B-17, 116B-20, or 116B-21" for "G.S.

116B-13 or G.S. 116B-14, or both," in the first sentence of subsection (a) and substituted "May 1" for "September 1" in the first sentence of subsection (d).

§ 116B-30. Preparation of list of owners by State Treasurer and Commissioner of Insurance.

(a) Listing of Names. — There shall be delivered to each clerk of superior court prior to November 1 a list prepared by the State Treasurer of escheated and abandoned property reported to him, and there shall be delivered to each clerk of superior court prior to September 1 a list prepared by the Commissioner of Insurance of escheated and abandoned property reported to him, which lists shall contain:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of owners of escheated and abandoned property;
- (2) The names and addresses of the holders of the abandoned property; and
- (3) A statement that claim and proof of legal entitlement to escheated and abandoned property shall be presented by the owner to the Treasurer, and setting forth where further information may be obtained.

(b) Notice. — At the time the said lists are distributed to the clerks of superior court, the Treasurer or Commissioner of Insurance shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of such lists and that the same are available for inspection at the offices of the respective clerks of superior court, together with such other information as the Treasurer or Commissioner of Insurance shall deem appropriate to appear in such notice.

(c) Property Not Required to Be Listed. — The Treasurer or Commissioner of Insurance is not required to include in any such list any item of a value, as determined by the Treasurer or Commissioner of Insurance, in his discretion, of less than fifty dollars (\$50.00), unless he deems inclusion of items of lesser amounts to be in the public interest.

(d) Lists Retained by Clerks. — The clerks of superior court shall retain such lists on permanent file in their offices and shall make them available for public inspection.

(e) Lists Not Cumulative. — The lists prepared by the Treasurer and the Commissioner of Insurance shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, ss. 9-13.)

Effect of Amendments. — The 1981 amendment substituted, in the introductory paragraph in subsection (a), the language beginning "reported to him" and ending "shall contain" for

"which list shall contain" and inserted "or Commissioner of Insurance" in two places in subsections (b) and (c) and inserted "and the Commissioner of Insurance" in subsection (e).

§ 116B-31. Payment or delivery of abandoned property.

(a) Insurers. — Every insurer shall remit or deliver to the Commissioner of Insurance on or before December 1, any property deemed abandoned under the provisions of this Chapter and reported as required by G.S. 116B-29. These remittances shall be made payable to the State Treasurer. On or before December 10, the Commissioner of Insurance shall forward the remittances to the State Treasurer along with a copy of the reports required by G.S. 116B-29.

(b) Other Holders. — All other holders shall remit or deliver to the Treasurer with the report required to be filed by G.S. 116B-29 any property deemed abandoned under the provisions of this Chapter.

(c) Tangible Personal Property. — Prior to the delivery of any tangible personal property to the Treasurer, the holder shall report to the Treasurer the nature, condition and approximate value of each article of such property. The Treasurer may determine that delivery of specific tangible personal property is not in the best interest of the State, either because the sum or value is too small or for other good reason. The Treasurer shall notify the holder of the property of his determination and may refuse to accept delivery and custody of that property. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 14.)

Effect of Amendments. — The 1981 amendment rewrote subsection (a), which formerly read "Every insurer shall remit or deliver to the

Treasurer with the report required to be filed by G.S. 116B-29 any property deemed abandoned under the provisions of this Chapter."

§ 116B-32. Relief from liability by payment or delivery.

Upon the payment or delivery of abandoned property to the Treasurer, the State shall assume custody of the property and shall be responsible for its safekeeping. Any person who pays or delivers abandoned property to the Treasurer under this Chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-33. Income accruing after payment or delivery.

When property is paid or delivered to the Treasurer under this Chapter, the Treasurer shall hold the property without liability for profit or interest. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-34. Periods of limitation not a bar.

The expiration of any period of time specified by statutes or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report under this Chapter or to pay or deliver abandoned property to the Treasurer. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-35. Sale, retention or disposal of abandoned property.

(a) Sale by Auction. — All abandoned property, other than money or securities or other property sold under subsection (b) or tangible property retained under subsection (c) delivered to the Treasurer under this Chapter shall, within three years after delivery, be sold by him to the highest bidder at public sale in whatever city in the State affords, in his judgment, the most favorable

market for the property involved. The Treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale, if in his opinion, the probable cost of sale exceeds the value of the property. The Treasurer, in his discretion, may cause any abandoned or escheated property to be appraised prior to sale by one or more appraisers, but the Treasurer shall not be required to sell any property at the appraised value.

Each sale shall be preceded by a single publication of notice of the sale at least three weeks in advance in two newspapers of general circulation in the State.

(b) Securities and Other Property. —

(1) Securities in which the Treasurer may invest funds of the Escheat Fund may be retained by the Treasurer, in his discretion, as an investment or may be sold by the Treasurer upon receipt or at such time thereafter as he shall deem appropriate. All other securities shall be sold as soon as reasonably possible following receipt. If valid claim is made for any securities in the possession of the Treasurer, he may transfer such securities to the claimant or, in his discretion, pay to the claimant the value thereof as of the date claim is received, determined as hereinafter set out. Securities listed on an established stock exchange may be sold at the prevailing price on such exchange. Other securities may be sold over the counter at prevailing prices or by such other method as the Treasurer may determine to be advisable. United States Government Savings Bonds and United States War Bonds shall be presented to the United States for payment. Notice of sale of securities is not required.

(2) If the property is of a type customarily sold on a recognized market or of a type which is subject to widely distributed standard price quotations, the Treasurer may sell the property without notice by publication or otherwise.

(c) Retention of Tangible Property with Historic Value. — The Treasurer may retain any tangible property delivered to him, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

(d) Destruction of Valueless Property. — The Treasurer may destroy or otherwise dispose of any property delivered to him, if the property has no apparent commercial or historic value. The lack of apparent commercial or historic value shall be certified by the State Auditor, and a description of the property shall be filed with the certification.

(e) Title. — The purchaser at any sale conducted by the Treasurer pursuant to this Chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of title. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-36. Administration of Escheat Fund; Escheat Account.

(a) Escheat Account. — All funds received by the Treasurer as escheated or abandoned property and which were transferred prior to January 1, 1980, to the trust fund created under G.S. 116-209 shall remain in that trust fund and shall be placed in a special fund, designated the "Escheat Account."

(b) Investment and Transfer of Assets; Income. — The Treasurer shall be the trustee of the Escheat Account and shall have full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish his duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in his custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in G.S. 116B-37, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209.

(c) Security Interest in Escheat Account. — The State Education Assistance Authority, in addition to other powers vested under G.S. 116-201 to G.S. 116-209.23, inclusive, is authorized to pledge and vest a security interest in all or any part of the Escheat Account, by resolution adopted or trust agreement approved by it, as security for or insurance respecting the payment of bonds or other obligations, as defined in G.S. 116-201, including principal, interest and redemption premium, if any; provided, that such pledge and security interest in the Escheat Account shall, in the determination of the Authority, constitute a use of the Escheat Fund to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The Authority may submit to the Treasurer, from time to time as it deems necessary, requisitions for transfers of money in the Escheat Account to pay such bonds and other obligations to the extent necessary under such pledge of, or security interest in, the Escheat Account, or any part thereof, and the Treasurer is authorized and directed to pay such money so requisitioned to the Authority for such purposes.

(d) Limitation on Amount of Obligations Secured. — The principal amount of bonds and other obligations insured or secured by the Escheat Account shall not exceed 10 times the amount held for the credit of the Escheat Account, as certified from time to time by the Treasurer, and, in no event, shall exceed three hundred fifty million dollars (\$350,000,000). If the amount held for the credit of the Escheat Account, as certified by the Treasurer, shall be ten percent (10%) or less of the principal amount of the bonds and other obligations so insured or secured, the Authority shall not issue any additional bonds or cause additional obligations to be insured or secured by the Escheat Account until such time as the amount held for the credit of the Escheat Account exceeds ten percent (10%) of the principal amount of the bonds and other obligations secured or insured by the Escheat Account.

(e) Use of Excess Funds. — If the amount held for the credit of the Escheat Account at any time shall exceed the sum of thirty-five million dollars (\$35,000,000), such excess may be used by the State Education Assistance Authority, with the written approval of the Treasurer, for the purpose of either (i) making student loans or (ii) refunding outstanding bonds or other obligations issued by the Authority and secured by a pledge of, or a security interest in, the Escheat Account. Any excess so used shall be repaid by the Authority to the Escheat Account in the manner agreed between the Authority and the Treasurer.

(f) Refund Reserve. — The Treasurer shall retain in the Escheat Fund, as a permanent refund reserve, either the sum of five million dollars (\$5,000,000) or a sum equal to the total value of escheated or abandoned property received in the preceding fiscal year, whichever is greater, for the purpose of payment of refunds of escheated or abandoned property to persons entitled thereto.

(g) Additional Funds for Refunds. — If at any time the amount of the refund reserve shall be insufficient to make refunds required to be made, the Treasurer, in addition, may use all current receipts derived from escheated or

abandoned property, exclusive of earnings and profits on investments of the Escheat Fund and the Escheat Account, for the purpose of making such refunds; and if all such funds shall be inadequate for such refunds, the Treasurer may apply to the Council of State, pursuant to the Executive Budget Act, to the limit of funds available from the Contingency and Emergency Fund, for a loan, without interest, to supply any deficiencies, in whole or in part. No receipts derived from escheated or abandoned property, other than earnings or profits on investments, shall be paid to the Authority until: (i) all valid claims for refund have been paid; (ii) the reserve for refund shall equal five million dollars (\$5,000,000); and (iii) the amount loaned from the Contingency and Emergency Fund shall have been repaid by the Escheat Fund.

(h) Expenditures. — The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to G.S. 116B-47; costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes.

(i) Records. — Before making a deposit to the Escheat Fund, or retaining or destroying property, the Treasurer shall record the name and address of the holder, the name and last known address of each person appearing from the holder's reports to be entitled to the abandoned property, the name and last known address of each insured person or annuitant, the amount or description of the property, and, with respect to each policy or contract listed in the report of an insurer, its number and the name of the corporation. The records shall be available for public inspection at all reasonable business hours. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-37. Distribution of income of fund.

The income derived from the investment or deposit of the Escheat Fund shall be distributed annually on or before July 15th to the State Education Assistance Authority for loans to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. Such loans shall be made upon terms, consistent with the provisions of this Chapter, pursuant to which the State Education Assistance Authority makes loans to other students under G.S. 116-201 to 116-209.23, Article 23. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-38. Claim for abandoned property paid or delivered.

(a) Filing. — Any person claiming an interest in any property delivered to the Treasurer under this Chapter may file a claim to the property or to the proceeds from its sale. The claim shall be on a form prescribed by the Treasurer. The claim shall be made to the person originally holding the property, or to his successor or successors. If such person is satisfied that the claim is valid and that the claimant is the actual and true owner of the property, he shall so certify to the Treasurer by written statement attested by him under oath, or in case of a corporation, by two principal officers, or one principal officer and an authorized employee thereof. The determination of the holder

that the claimant is the actual and true owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from such sale to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by such assignment. In the event the person originally holding the property rejects the claim made against him, the claimant may appeal to the Treasurer.

If the person originally holding the property, or his successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the person originally holding the property and the lack of a successor.

(b) Determination. — The Treasurer shall consider each claim and make a determination on it within 90 days after it is filed. He may hold a hearing, which shall be held in the manner required by Article 3 of the Administrative Procedure Act, Chapter 150A, and the Treasurer may designate any individual as hearing officer. Each determination shall be in writing, shall state the reasons for the decision and shall be given or sent to the claimant. Each determination may be appealed as provided under Article 4 of Chapter 150A.

(c) Payment. — If the claim is allowed, the Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices of sale or for the Treasurer's administrative costs, other than cost of notice provided for in G.S. 116B-29.

(d) Payment by Holder. — Any holder who has paid moneys to the Treasurer pursuant to this Chapter may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the Treasurer shall forthwith reimburse the holder for the payment.

(e) Indemnification. — The claimant or claimants and the holder, if he certifies the claim under subsection (a) or receives reimbursement under subsection (d), shall agree to indemnify, save harmless and defend the State, the Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant or claimants shall also agree to indemnify, save harmless and defend the holder, if the holder certifies the claim under subsection (a) or pays a claim under subsection (d). (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-39. Examination of records.

(a) Treasurer. — The Treasurer and the Commissioner with respect to records of insurers, may at reasonable times and upon reasonable notice cause to be examined the records of any person with respect to holding, reporting, paying, or delivering any property that is required to be reported pursuant to this Chapter.

(b) Other Examiner. — When requested by the Treasurer, an examination shall be conducted by any administrative licensing or regulating agency otherwise empowered to examine the records of a holder. For the purpose of this section, the Commissioner of Banks is vested with full authority to examine the records of any financial institution doing business within the State, including those not organized under the laws or created in this State. All costs resulting from examination by the Commissioner of Banks of the records of financial institutions other than banks organized under Chapter 53 of the General Statutes shall become an obligation of the Escheat Fund and payable on demand of the State Treasurer upon receipt of proof of cost from the Commissioner of Banks.

The Treasurer may also receive copies of any reports or forms filed by any person with any State agency, including the Department of Revenue, if he deems it necessary or appropriate to the proper administration of this Chapter. The Treasurer may also receive copies of any such reports or forms when an official of any such State agency is of the opinion that the person has failed to report such property.

(c) Confidentiality of Records. — Information derived by any examination of records or otherwise communicated to the Treasurer, the Commissioner or their respective representatives concerning abandoned property shall be confidential and not available for public inspection to the extent the Treasurer or the Commissioner finds necessary to protect the interest of the holder, the owner, the State and the public welfare; and, in any event, any such information or record which is confidential under any law of this State or of the United States when in the possession of a person, firm, corporation, agency or other entity named in such law shall also be confidential when revealed to or delivered into the possession of the Treasurer or the Commissioner and shall not be available for public inspection.

(d) Order. — The Treasurer, and the Commissioner with respect to reports of insurers, for the purpose of ascertaining the correctness of any report, the necessity of making a report where none has been made or the payment or delivery of property required to be paid or delivered under this Chapter, shall have the power to examine, personally or by an agent designated by him, any books, records, papers or other data which may be relevant to or material to such inquiry; and the Treasurer or the Commissioner may order the person required to make such report or pay or deliver such property, or any officer or employee of such person, or any person having possession, custody, care or control of books, records, papers or other data relevant or material to the matters under inquiry, or any other person having knowledge in the premises, to appear before the Treasurer or the Commissioner or their respective agents, at a time and place named in the order, and to produce such books, records, papers or other data, and to give such testimony under oath as may be material or relevant to such inquiry, and the Treasurer or the Commissioner or their respective agents may administer oaths to such person or persons. If any person so ordered refuses to obey such order or to give testimony when ordered, the Treasurer or the Commissioner may apply to the Superior Court of Wake County for a summons and court order requiring such person or persons to comply with the order of the Treasurer or the Commissioner; and failure to comply with such court order shall be punished as for contempt. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 671, s. 18.)

Effect of Amendments. — The 1981 amendment, effective July 1, 1981, added the third sentence of subsection (b).

§ 116B-40. Proceeding to allow examination or compel delivery.

If any person refuses to allow examination of records or to deliver property to the Treasurer as required under this Chapter, the Treasurer, or the Commissioner with respect to records of insurers, may bring an action in a court of appropriate jurisdiction to enforce the examination or delivery. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-41. Penalties.

(a) Failure or Refusal to File; False Reports. — Any holder who shall willfully fail, neglect or refuse to make and file any required report or files a false report or who shall willfully fail, neglect or refuse to pay or deliver any property to the Escheat Fund shall be liable to the State of North Carolina in the sum of three hundred dollars (\$300.00) for each and every such failure, neglect, refusal or false report, and an additional sum of ten dollars (\$10.00) for each and every day of the period of default, or a sum equal to one-half of the value of the property, whichever is greater. Such penalty may be recovered by the State in an appropriate legal proceeding instituted by the State upon the relation of the Treasurer. The proceeds of any penalty or judgment recovered in such action shall be paid to the Treasurer to be added to the Escheat Fund.

(b) Compelling Compliance. — The recovery of such penalty shall not relieve the defendant-holder from the duty of making and filing said reports. The State of North Carolina, upon relation of the State Treasurer or the Commissioner with respect to records of insurers, may bring injunctive proceedings to compel compliance with the requirements of this Chapter relative to the making and filing of said reports, or the Treasurer may compel compliance by suit and/or bill for discovery.

(c) Interest Penalty. — In addition to any other damages, penalties or fines, any person who fails to render reports, files a false report, refuses to pay or deliver abandoned property to the Treasurer or perform any other duties required under this Chapter shall be charged interest at the rate of twelve percent (12%) per annum on the property or its value from the date the property should have been reported, paid, delivered or the day the false report was filed, until a correct report is filed. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-42. Regulations.

The Treasurer or the Commissioner with respect to insurers, may adopt or amend the regulations necessary to carry out the provisions of this Chapter. These regulations shall be adopted or amended under the procedures of the Administrative Procedures Act, Chapter 150A. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-43. Restriction on agreement to locate reported property.

(a) Limit on Fees. — No agreement entered into after a report is filed under G.S. 116B-29 is valid if any person undertakes thereby to locate or reveal the whereabouts of property included in that report for a fee or compensation, unless the agreement is:

- (1) In writing and duly signed and acknowledged by the property owner; and
- (2) Clearly states the fee or compensation to be paid, which may not exceed twenty-five percent (25%) of the actual value of the property recovered; and
- (3) Discloses the nature and value of the property; and
- (4) Discloses the name and address of the holder; or discloses that the property has been paid or delivered to the Escheat Fund.

(b) Agreements Not Affected. — Subsection (a) shall not apply to any agreement made by any person, including personal representatives, guardians, trustees, and others in a representative capacity, with another to discover property in which such person has an interest for a fixed fee or hourly or daily rate, not contingent upon the discovery of property or the value of property discovered; provided, however, that any agreement entered into under this

subsection for the purpose of evading the provisions of subsection (a) shall be invalid and unenforceable.

(c) Excessive Consideration. — Nothing in this section shall be construed to prevent an owner from asserting, at any time, that any agreement to locate or reveal the whereabouts of properties is based on an excessive or unjust consideration. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-44. Effect of laws of other states.

This Chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this Chapter. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-45. Severability.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Chapter which can be given effect without the invalid provisions, and to this end the provisions of this Chapter are severable. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-46. Transition and application.

Any person holding property that was not required to be reported, delivered or paid to any State agency as abandoned property under the laws of this State prior to January 1, 1981, and which, on December 31, 1980, has been held for a period greater than the period for abandonment established by this Chapter, shall not be subject to the reporting provisions of this Chapter. Such property shall be reported and delivered or paid to the Treasurer, however, in such manner and at such time as the Treasurer shall prescribe by rule adopted to promote the identification and delivery or payment of the property and the reasonable convenience of the holders.

Any person holding property that was subject to reporting, delivery or payment to a State agency as abandoned property under the laws of this State prior to January 1, 1981, and that is subject to a shorter period for abandonment under this act, may report and deliver or pay to the Treasurer that property between January 1, 1981, and June 30, 1981.

This act shall not affect any duty to file a report or deliver or pay to any State agency any abandoned property under the laws of this State prior to January 1, 1981. (1979, 2nd Sess., c. 1311, s. 1; 1981, c. 531, s. 15.)

Effect of Amendments. — The 1981 amendment substituted "1981" for "1980" throughout the section and substituted "1980" for "1979" in the first sentence of the first paragraph.

§ 116B-47. Employment of persons with specialized skills or knowledge.

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as he shall deem necessary or appropriate for the administration of this Chapter, including, but specifically not limited to, valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which he has reason to believe may have escheated. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-48. Agreements to coordinate the collection and administration of abandoned property.

(a) Coordination with United States and Other States. — The Treasurer is hereby authorized, with the approval of the Governor and Council of State, to enter into agreements with the United States government or any department or agency thereof, or with any state or political subdivision thereof, for the purpose of coordinating and improving the collection and administration of property abandoned or escheated under the laws of this State and collected and administered by the Treasurer with the collection and administration of property abandoned or escheated under the laws of the United States or any other state or political subdivision.

(b) Expenditures to Effectuate Agreements. — The Treasurer, with approval of the Governor and Council of State, is authorized and empowered to undertake such agreements and make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate such agreements. (1979, 2nd Sess., c. 1311, s. 1.)

§ 116B-49. Certification by holders with tax return.

(a) Certification. — Every business association, including financial institutions and life insurers, holding property deemed unclaimed and abandoned under this Chapter, shall certify such holding in the income tax return required by Chapter 105 of the North Carolina General Statutes. The certification shall be a part of the tax return with which it is filed. If such business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue.

(b) Certification Not Confidential. — The information appearing on the certification shall not be privileged or confidential, and such information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if such date shall fall on a weekend or holiday, on the next regular business day thereafter. (1979, 2nd Sess., c. 1311, s. 1.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

October 15, 1981

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing 1981 Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN
Attorney General of North Carolina

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